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Contents

Federal Register

Vol. 53, No. 57

Thursday, March 24, 1988

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

Marketing percentages

Walnuts Grown in California; Free, Reserve, and Export Percentages for the 1987–88 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes a free percentage of 72 percent, a reserve percentage of 28 percent, and an export percentage of 100 percent of the reserve percentage for merchantable California walnuts handled during the 1987–88 season, which began August 1, 1987. This action is taken under the marketing order for walnuts grown in California and is intended to avoid unreasonable fluctuations in supplies and prices in view of a projected large 1987 walnut crop.

EFFECTIVE DATES: August 1, 1987, through July 31, 1988.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 984, as amended [7 CFR Part 984], regulating the handling of walnuts grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 59 handlers of walnuts subject to regulation under the walnut marketing order, and approximately 8,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California walnuts may be classified as small entities.

This final rule requires handlers of California walnuts to withhold, as a reserve, from the normal domestic market, 28 percent of walnuts certified as merchantable during the 1987–88 crop year. The remaining 72 percent of walnuts certified as merchantable may be sold by handlers in any market. In preparing recommendations, the Walnut Marketing Board (Board) estimated the 1987 orchard-run production to be at 520 million inshell pounds, which is 44.4 percent larger than last year's 360 million pound crop and 11.2 percent larger than 1982's production of 467.8 million inshell pounds.

Of the 28 percent of the merchantable walnuts required to be withheld in reserve, 100 percent will be available for export outlets and should provide additional supplies to meet both inshell and shelled export demand. Handlers may also obtain reserve credit for disposing of substandard quality walnuts for oil or animal feed.

The United States Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders specify that reserve pool programs must make at least 110 percent of recent years' sales available to primary markets each season. This requirement would be met. The amount to be made available represents 143 percent of 1983's record large shipments.

While this rule may restrict the amount of walnuts which handlers may sell in normal domestic markets, it is intended to lessen the impact of the projected oversupply situation facing the industry and to promote stronger marketing conditions, thus avoiding unreasonable fluctuations in prices and supplies and improving grower returns.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

This action establishes a new § 984.231 and is based on recommendations of the Board, two comments received, and other available information.

Notice of a proposal to establish free, reserve, and export percentages for 1987–88 season California walnuts was published in the **Federal Register** [52 FR 42298] on November 4, 1987. That notice proposed free, reserve, and export percentages of 60 percent, 40 percent, and 65 percent of the reserve percentage, respectively, and was based on a recommendation made by the Board at its September 16, 1987, meeting. The notice also proposed leaving the remaining 35 percent of the reserve unallocated until a later date, requiring handlers to withhold 35 percent of the reserve from the market until that time. Comments on the proposed rule were invited from interested persons until November 19, 1987. Two comments were received.

One comment was from James J. Hughan of Tulare Nut Company, a handler located in Tulare, California. Attached to Mr. Hughan's comment was a list of 12 walnut growers who agreed with Mr. Hughan's comment.

The commenter objects to the establishment of an unallocated reserve for the purpose of withholding walnuts from the export market when the state California Walnut Commission is using Federal government and industry funds to maintain and expand export markets for California walnuts. However, in making its recommendations, the Board develops marketing estimates, including

both inshell and shelled export demand. Therefore, any estimated market expansion would be considered in arriving at reserve and export percentages. This final rule changes the November 4 proposals by eliminating the proposed unallocated reserve. While the November 4 proposal would have required handlers to withhold 35 percent of their reserve from all markets to be used as determined by the Board at a future date, this final rule allows handlers to ship 100 percent of their reserve into export markets as agents of the Board.

The commenter also objects to a statement in the proposed rule that the rule was brought about by essentially small entities acting on their own behalf. The commenter states that the Board's September 16 recommendation, upon which the November 4 proposed rule was based, was made by one large processor, who controls one half of the votes on the Board, acting in conjunction with other large handlers. While Sun Diamond Growers of California (a cooperative which handled more than 50 percent of certified merchantable production during the 1984–85 and 1985–86 marketing years) and growers who market their walnuts through Sun Diamond do hold five of the 10 seats on the Board, the Board is, in our view, representative of the industry as a whole. The Board is composed of five grower members, four handler members, and one non-industry member, and the nine industry members are apportioned between cooperative and independent segments of the industry based on each group's percentage of total certified merchantable production. Moreover, the Board's September 16 recommendation was made on an 8 to 1 vote of the Board's ten members, with the non-industry member abstaining.

The commenter also believes that the rule would have a significant impact on small growers and processors because small processors would have difficulty meeting the export reserve requirements because they do not have the volume or equipment to sell walnuts in foreign markets. The commenter also states that foreign buyers and brokers would not be interested in doing business with someone who is only capable of supplying small amounts of walnuts on an irregular basis. Handlers of any size do have options in disposing of their walnuts. For example, the marketing order provides that handlers may meet their export reserve requirements by delivering reserve walnuts to the Board for disposition by the Board. In this case, walnuts would be pooled and sold by the Board in export or other markets at the highest returns obtainable consistent with the ultimate complete disposition of the export reserve. The proceeds from the sale of these pooled walnuts, minus all expenses incurred by the Board in receiving, holding, and disposing of the walnuts, would be distributed to the handlers who delivered walnuts to the pool in proportion to each handlers' contribution.

The second comment received was from Albert F. Guerra of Pacific Nut Company, a handler located in Hollister, California. This commenter is against the establishment of a reserve percentage and states that, in spite of the notice of proposed percentages, sales of this year's crop have been slow and at very low prices. The commenter states that the only way to dispose of the 1987 walnut crop is to have it purchased, and that the market will find its own price level to accomplish that objective. However, the marketing of this year's crop without the reserve could result in an oversupply situation, market instability, and a downward spiral in prices, whereby buyers would be reluctant to purchase walnuts until they were convinced that a bottom price had been reached. This could result in both decreased consumption and even lower prices.

The commenter also claims that the 1987 crop is not as large as the Board estimated at its September 16, 1987, meeting. The Board's estimate is based on a crop projection made by USDA's Agricultural Statistics Board (ASB). On January 13, 1988, the ASB issued a revised projection of 490 million inshell pounds. The Board met on February 12, 1988, to consider current crop and marketing conditions. The Board reviewed the crop estimate as revised by the ASB. Based on sales to date and anticipated future demand, the Board felt that the percentages as previously recommended on December 17, 1987, would provide the amount of walnuts necessary to meet the anticipated trade demand and provide an adequate carryout for the next marketing year.

Finally, the commenter states that a reserve percentage will be disadvantageous to handlers who sell most of their walnuts prior to January 1 of each marketing year rather than on a year-round basis because handlers would have to hold back on disposing of 14 percent of their tonnage (the unallocated reserve) beyond January 1, 1988. Establishing or revising free, reserve, and export percentages is intended to avoid unreasonable fluctuations in supplies and prices during the marketing season. In doing so, all handlers including those who may sell most of their walnuts before January 1 would benefit.

On December 17, 1987, the Board met to reconsider its September 16, 1987, recommendation for free, reserve, and export percentages of 60 percent, 40 percent, and 65 percent of the reserve percentage, respectively, and its estimates of supply and inshell and shelled domestic and export trade demands upon which those percentages were based. These trade demands are the amounts of inshell and shelled walnuts expected to be sold in normal domestic or export market outlets, respectively, during the current marketing year. The inshell and shelled domestic trade demands are adjusted to account for walnuts certified as merchantable which are carried in on August 1, 1987, from the 1986–87 marketing year and for the desirable carryout of walnuts on July 31, 1988, for use in both domestic and export markets during the 1988–89 marketing year.

The Board left its September 16, 1987, estimate of supply subject to regulation unchanged at 222.4 million kernelweight pounds. Adjusted inshell demand is increased from 19.5 million kernelweight pounds to 26.2 million kernelweight pounds based on an increase in the desirable carryout on July 31, 1988. The Board believes that additional inshell walnuts will be needed to meet export trade demand, particularly from Japan, during the early months of the 1988–89 marketing year before 1988 crop walnuts are available for market. The Board also increased the adjusted shelled demand from 113.0 million kernelweight pounds to 135.0 million kernelweight pounds by increasing the desirable carryout from 28.0 million kernelweight pounds to 50.0 million kernelweight pounds. The 50.0 million kernelweight pound desirable carryout is more in keeping with actual carryouts in recent years, which averaged 46.6 million kernelweight pounds over the 1982–83 through 1986–87 period and which are trending upward. The Board left its inshell and shelled export demands unchanged at 41.3 million kernelweight pounds and 12.0 million kernelweight pounds, respectively. Based on the changes in adjusted inshell and shelled demands, the Board recalculated its recommended free, reserve, and export percentages at 72 percent, 28 percent, and 100 percent of the reserve percentage, respectively.

The complete estimates used by the Board to revise its recommended percentages for the 1987–88 marketing year are given in the table as follows.

Weight figures for inshell walnuts are converted to their equivalent shelled kernelweights. The September 16, 1987, estimates, where different from the December 17, 1987, estimates, are given in parentheses.

	Inshell (1,000 lbs.)	Conversion factor (percent)	Kernel weight (1,000 lbs.)
Supply:			
1. Orchard-Run Production	520,000		
2. Less: Miscellaneous Farm Use	2,000		
3. Commercial Production	518,000	40	207,200
4. Plus: Uncertified Carryin Inshell	69	45	31
Uncertified Carryin Shelled			7,208
5. Total Mechantable Supply			214,439
6. Plus: Substandard Creditable for Reserve			8,000
7. Total Supply Subject to Regulation			222,439
Demand:			
8. Inshell Domestic Demand	40,000		
9. Plus: Desirable Carryout	18,751		
	(4,000)		
10. Less: Certified Carryin	583		
11. Adjusted Inshell Demand	58,168	45	26,176
	(43,417)		(19,538)
12. Shelled Domestic Demand			103,000
13. Plus: Desirable Carryout			50,000
			(28,000)
14. Less: Certified Carryin			18,020
15. Adjusted Shelled Demand			134,980
			(112,980)
16. Total Demand (Item 11 + Item 15)			161,156
			(132,518)
17. Free Percentage (Item 16—Item 7 x 100)			(1)
18. Reserve Percentage (100%—Item 17)			(2)
Determination of Export Percentage:			
19. Reserve Available for Export (Item 5—Item 16)			53,283
			(81,921)
20. Export Demand:			
Inshell	91,740	45	41,283
Shelled			12,000
Total			53,283
21. Percent of Reserve for Export (Item 20—Item 19 x 100)			(3)

[1] 72 percent (60).
[2] 28 percent (40).
[3] 100 percent (65).

Therefore, for the reasons specified, the percentages established by this final rule are changed from those proposed in the November 4, 1987, notice based on the comments received, the Board's recommendations, and other available information.

After consideration of all relevant matter presented, including the Board's recommendations, the two comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action applies to all walnuts received by handlers during the 1987–88 crop year, which began August 1, 1987; (2) handlers are currently processing 1987–88 crop year walnuts; and (3) handlers are aware of this action, which was recommended by the Board at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 984

Marketing agreements and orders, Walnuts, California.

For reasons set forth in the preamble, 7 CFR Part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 984 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Add a new section consisting of § 984.231 to read as follows:

[**Note:** This section will not appear in the annual Code of Federal Regulations]:

§ 984.231 Free, reserve, and export percentages for California walnuts during the 1987–88 marketing year.

The free, reserve, and export percentages for California walnuts during the marketing year beginning August 1, 1987, shall be 72 percent, 28 percent, and 100 percent of the reserve percentage, respectively.

Dated: March 21, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-6424 Filed 3-23-88; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: By this final rule, the Farmers Home Administration (FmHA) adopts its proposed rule published February 3, 1988. This action is needed to comply with section 607 of the Agricultural Credit Act of 1987, Pub. L. (Pub. L.) 100-233. The intended effect of this section is to revise the criteria for voting and serving as elected county committee members to permit greater participation by the public in the process.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, USDA, Room 6442, Washington DC 20250, Telephone: (202) 382–1061.

SUPPLEMENTARY INFORMATION .

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA implemented certain provisions of the Agriculture Credit Act of 1987 (Pub. L. 100–233) upon publication by proposed rule in the **Federal Register** (53 FR 3176) on February 3, 1988. That rule provided for a 30 day comment period ending March 4, 1988. Thirty-one written comments were received. All were considered in developing the final rule. The following is a discussion of comments received:

One respondent commented that the size of FmHA county committees is too small. The Agency reviewed this comment and determined that since the present three member committee is mandated by law, no change in the regulation is required.

One respondent commented on the provision that prohibits members from performing certain functions (i.e., serving as an official or performing administrative functions such as clerical services, maintaining financial or other records, developing operating budgets, etc.), for an FmHA financed association or organization after appointment. The respondent concluded that this provision was in conflict with the change allowing eligible farm borrowers to serve because a farm borrower would continue his/her farm operation after appointment. FmHA reviewed this provision and determined that, as stated, it clearly does not apply to borrower's farming operations. Therefore, the Agency made no change in this provision.

Ten respondents commented that sons and daughters could be excluded from voting because they are not an "owner, tenant, sharecropper, or spouse of a farmer," and suggested that the regulation be changed to include them. The Agency reviewed this comment and determined that spouses are the only specific family members defined as a farmer in Pub. L. 100–233. We believe that the regulation's definition of farmer as owner, tenant or sharecropper is sufficiently broad. Consequently, sons and daughters are not entitled to vote unless they are farmers in their own right.

One respondent commented that individuals who fail to pay their just financial obligations that are either acknowledged, reduced to judgment by a court, or confirmed by a final administrative determination of a unit of the Federal, State, or local government, not be eligible to serve as county committee members. The respondent suggested that a provision be included that would require that to be elected or remain on the committee, members must pay their just debts. FmHA reviewed this comment and determined that the regulation already provides for this by its reference to FmHa Instruction 2045–BB, which includes provisions for paying just debts. Therefore, the Agency does not feel that any additional references in the regulation are necessary.

Three respondents commented that individuals who are ineligible for FmHA services because of a legal or administrative determination that conversion or unaccountability of proceeds from the sale of security property has occurred in an FmHA insured or guaranteed loan, be excluded from nomination and serving as a county committee member. FmHA reviewed the comment and determed that restricting only former or present FmHA borrowers who have converted security property or been found unaccountable for it, from nomination for the county committee would create an inequity by placing an eligibility requirement only on a selected group, specifically those individuals who are current or former FmHA borrowers. This would be particularly inequitable since FmHA does not have access to the loan records of borrowers who have loans not financed through FmHA. However, FmHA does consider conversion or unaccountability of security property to be a potentially serious matter that may constitute personal conduct which adversely affects FmHA or USDA. Therefore, should an FmHA borrower be found to have improperly converted security property or been unaccountable for such property, this can be grounds for possible removal. The same would be true for non-FmHA borrowers on the committee where the Agency receives information that this has occurred with another lending institution. In cases where there is gross negligence and/or deliberate fraud involved, there could be a determination that there is sufficient reason for removal. Removals of county committee members for personal cause will be made only after a full report has been made by the State Director to the Administrator, and a decision is made at that level. No change is made to the regulation since removal for conduct adverse to the Agency is already spelled out in the regulations.

One respondent commented that former or present FmHA delinquent borrowers, or FmHA borrowers who have defaulted on their loans, be prohibited from serving as county committee members. The Agency does not believe that delinquency or default on an FmHA loan, in and of itself, reflects on the character of a present or former borrower. Therefore, we have determined that delinquency or default on an FmHA loan, when viewed alone, is not sufficient cause to justify exclusion from serving as a county committee member.

Four respondents commented that the regulations should clearly define the term "or active in the management or affairs of any political club, organization or committee." The respondent expressed concern that FmHA County Supervisors or State Directors would apply the label of "political" to farm activist groups, regardless of their actual involvement in partisan politics. The regulation specifies that the prohibition on involvement in politically active organizations is limited to those organizations involved in partisan politics. Therefore, this would not include members of non-partisan political action groups. The specific criteria for these determinations are referenced in the regulation, and are contained in FmHA Instruction 2045–CC, which is available in any FmHA office. Consequently, the Agency believes the regulation is sufficiently clear on this point and does not require further elaboration.

One respondent commented that the regulations do not provide guidance on the number of allowable FmHA borrowers serving on the committee in instances where more than one area committee is established in the same county. The Agency reviewed this comment and determined that the regulation provides for the establishment of an area committee to service a part of a county, parts of two

or more counties, or a combination of two or more counties, but only in instances where establishing a county committee is not feasible for reasons as provided in the regulation. If an area committee is established, that area committee would provide services to a specific area as does a regular county committee. Although it is possible to have two committees in one county, each county or area committee is independent and therefore would be allowed to have an FmHA borrower as a committee member. This would be consistent with the requirement in the law that limits each committee to one farmer eligible for an FmHA loan. The Agency determined that no change in the provision is necessary.

Seven respondents commented that the language in § 2054.1102 (c)(4) and (d) is not consistent in the definition of a farmer eligible for a loan made or insured by FmHA, and that "qualified applicants" should be changed to "certified applicants." The respondent suggested that the Agency use consistent language throughout the regulation. The Agency reviewed this comment and determined that the language used in both subsections should be consistent and has made appropriate changes throughout the regulations.

Eight respondents commented that the regulations should be written to allow any eligible FmHA borrower to be considered for the county committee. FmHA reviewed this comment and determined that the regulation already provides for this under § 2054.1104. Therefore, the Agency does not feel that any additional requirements are necessary.

One respondent commented that the provision which allows the County Supervisor to designate alternates for absent committee members should be changed to require that the State Director designate alternates for absent committee members. The Agency reviewed this comment and determined that the authority granted to County Supervisors to designate alternates in the absence of committee members is granted only when committee members are not available to attend meetings. The Agency believes that this authority is necessary at the County Office level in order to assure timely meetings. The Agency has no information to suggest that this delegation level has resulted in any problems.

Nine respondents commented the provision which provides that the State Director or his designated staff may solicit nominations during the nominating period be removed because solicitation by FmHA undermines the purpose of the election. The Agency reviewed this comment and disagrees that the solicitation of nominees by FmHA constitutes a conflict of interest. In many parts of the country, it is very difficult to get farmers to run for the county committee. If the Agency personnel did not solicit nominations many committees could not be properly constituted. Also, the regulations are clear that once individuals have been nominated, no further action for or against candidates can be taken by FmHA personnel. The Agency is satisfied that this provision does not limit the freedom of choice of voters.

Ten respondents commented that the 1987 Credit Act provides for the election of one member of the county committee to be a FmHA borrower and that the FmHA regulation does not make it clear that an elected borrower should have precedence over a designated FmHA borrower in the appointment process. Similar comments indicating designated members and alternates should also be FmHA borrowers were received. Since only one individual eligible for an FmHA loan can serve at a time, the respondents further commented that the regulation should be changed to make it clear that an elected FmHA borrower would serve instead of a designated borrower. A similar comment was received that the county committee should have representatives of farm borrowers in order to better serve the farmer. The agency reviewed the comments and determined that the Agriculture Credit Act of 1987 (Pub. L. 100–233) permits FmHA borrowers to serve on county committees. However, the Act is silent on the issue as to whether the FmHA borrower should be an elected or designated member. Likewise, the law is silent on the qualifications of alternate members. In the first instance, the Agency can find no meaningful distinction between the level of service provided by an elected member or a designated member that would justify the preference or distinction suggested in the comments. Furthermore, the law specifically states that individuals eligible for FmHA loans may be elected *or* designated. To deprive eligible borrowers from being designated would therefore be contrary to the law. In the second instance, the Agency does not believe that the administrative burden of limiting alternate members to being FmHA borrowers is feasible or prudent given the difficulty most jurisdictions have in finding individuals to serve. Therefore no change is made to the final regulations on these points.

Nine respondents commented the regulations require that the elections be held in June, and that June is a very busy time for farmers. One respondent further commented that the regulations should be changed to hold the elections in late fall or winter months. Farming seasons vary throughout the country and as a past practice, FmHA has always appointed new county committee members in the month of June. Our experiences have not indicated that this timeframe is unreasonable for farmers. We believe that changing the elections from June to late fall or winter would mean following a later schedule than the Agency feels is optimum; i.e., non-disruptive to normal farm activities. In addition, changing the election schedule at this point would disrupt the current cycle of appointments.

Five respondents commented on the process for absentee ballots and suggested that § 2054.1117 be changed to allow ballots to be hand carried in sealed envelopes to County Offices, and that FmHA verify votes by the same process used for mailed ballots. A similar comment was received and this respondent suggested that the regulation be changed to allow a single individual to hand carry numerous ballots that are hand carried in sealed envelopes to the County Office. The Agency reviewed these comments and determined that allowing numerous ballots to be hand carried by a single individual jeopardizes the concept of each farmer only being entitled to one vote. The Agency believes that requiring that absentee ballots be mailed in separate envelopes, and that only the voter can hand carry his or her own ballot serves as a deterrent to the possibility of undue influence over voters, or even of voter fraud through ballot stuffing. FmHA further determined that the difference in the verification of absentee ballots and regular ballots is the verification of challenged votes. This difference between voting in person and voting by absentee ballot (i.e., voter is not present), requires the difference in the verification of ballot process. FmHA's practice is consistent with nationwide practices in most municipal and public elections.

Six respondents commented that § 2054.1120 be changed to give advance notice to the public as to time and date of ballot counting. The Agency reviewed this comment and determined that the date designated by the County Office for ballot counting is indicated on the Election of County Committee Posters. These Posters are used by all FmHA County Offices to announce the dates of significant events that take place during the election process. If an individual is interested in being present at the ballot

counting, he or she can always contact their FmHA County Office for the appropriate date. The Agency determined that no change in the provision is necessary.

One respondent commented that § 2054.1120 be changed to clearly state that witnesses cannot be County Office staff. The Agency reviewed this comment and determined that the presence of members of the general public as witnesses is optional, depending on the availability of persons to serve as witnesses. Should no member of the general public be available, the Agency is satisfied that the County Office staff can serve as trustworthy witnesses. Since interest by the general public in the elections is negligible in a significant number of locations around the country, it would be administratively burdensome to exclude FmHA County Office employees from serving as witnesses and to require public witnesses. Additionally, the Agency is satisfied that its employees are trustworthy to hold elections and verify the results. Therefore, the Agency does not believe that requiring public witnesses should be made mandatory.

One respondent expressed a concern that § 2054.1119 only suggests that the ballot counting process be done in public, and that it also only suggests that it be done in the County Office during regular working hours. The Agency reviewed this comment and determined that the language provided in § 2054.1119 can be strengthened. Therefore, we have changed the regulation to provide that the counting process shall be in public, to the extent that the public wishes to attend, and that it shall take place in the County Offices during regular working hours.

One respondent commented that the requirement that a dishonorable discharge from any branch of the armed forces is an overly broad trigger for disqualification and that this requirement appears to be irrelevant or overly broad. The Agency has always barred persons who received a dishonorable discharge from the military from serving on the county committee. This provision is retained to ensure that county committee members be of good character and have the confidence of the public.

Three respondents commented that § 2054.1111(c) leaves the determination of petition validity and eligibility to hold office solely in the discretion of the county supervisor. The respondent suggested that these determinations may adversely affect the potential nominee and should be subject to review, at least by the sitting county committee. The Agency reviewed this comment and determined that the responsibiity for validity of petitions and the nominee's eligibility to hold office is best placed at the County Supervisor level. Placing the responsibility for making decisions on the validity of petitions and eligibility to hold office with the County Supervisor has not proven to be a problem in previous elections. Therefore, the Agency believes that establishing a higher or additional review process is an unnecessary administrative burden.

One respondent commented that § 2054.1127 refers to the County Supervisor verifying committee members' mileage with readings from their "speedometers," and suggested that FmHA make a technical correction by using "odometers." The Agency agrees and adopted the recommendation.

Nine respondents commented that the regulations do not include the most important duties of the county committee, duties that were given to the committee in the Agriculture Credit Act of 1987, and that the FmHA regulations should be changed to include these duties. The Agency reviewed this comment and we have changed the regulation to include the additional duty indentified in the Agriculture Credit Act of 1987.

One respondent commented that the Law requires that county committees are responsible for determining if accelerated borrowers are actively farming in order that they may be eligible for restructuring. The respondent recommended that the provision that specifies the functions performed by county committees be changed to reflect this added responsibility. The Agency reviewed that comment and determined that the Law does require that community committees to make determinations concerning accelerated borrowers and eligibility for restructuring. However, the Law specifies that county committees will make determinations if as of October 30, 1987, a FmHA borrower continued to be actively engaged in farming operations for which the farmer program loan was made. This is a one time determination and therefore, is not a recurring function. The Agency has determined that because it is not a recurring function, it would not be necessary to include this function as a responsibility of the county committees.

Nine respondents commented on the provision of the regulations which permits the designation of a non-farmer to the county committee by the State Director. The respondents stated that the statutory language in 7 U.S.C. 1982(a) makes it clear that all county committee members must be farmers and that the definition in the regulation would mean the inclusion of non-farming landowners. The respondents further state that alternates should be farmers who ran in the election and should be selected based on the number of votes they received. It is the Agency opinion that the law established no criteria whatsoever in determining the qualifications of the non-elected member of the county committee and alternates. The Agency determination that these persons did not have to be farmers was a reasonable one given the fact that the Agency has always permitted one county committee member to be a non-farmer. Thus this provision resulted in no diversion from past practice and did not violate any stated or implied requirement of the law. The law was also silent on the method for selection of alternates. The Agency found that a number of individuals were willing to serve on the county committee if they did not have to stand for election. The Agency believes that if alternates were to be elected that fewer individuals would be willing to serve and that many county committees would not be able to appoint alternates. In view of this, the Agency does not wish to limit its prerogatives in the selection process by requiring that alternates be selected through the election process.

Four respondents commented that there should be a provision for a grievance procedure if a farmer does not believe that a county committee election is being held or was held according to the regulations. The Agency has a provision for retaining ballots for 60 days after the elections to provide for reconstruction of balloting in case a complaint concerning the election is made. All other election materials are retained for a period of three years following the election. It is the Agency's view that this provides an ample opportunity for individuals to challenge the results of elections. Once an election is challenged, the election materials would be retained until a final administrative determination is made regarding the election. To date, the current process has provided sufficient to both the Agency's and the public's needs. Consequently, we do not favor this proposal.

One respondent commented that they are aware of occasions where County Supervisors have not notified all county committee members of prospective meetings. The respondent wishes to make it a requirement of the regulations that all members of the committee be notified of meetings. Although the Agency is unaware of instances wnere

available committee members were not notified of committee meetings, we believe that adding a provision that such notification be made is appropriate. Consequently, § 2054.1103(c) is amended to state that *all* sitting county committee members must be notified of meetings.

Five respondents commented that the regulation's definition of a farmer is too broad and that it allows individuals to participate in the county committee elections who are not actually farmers, for example landlords. The respondents suggest that the definition be changed to limit it to individuals that actively engage in the production of agricultural products. Pub. L. 100–233 was silent on the definition of who is a farmer. The Agency chose to utilize the definition currently in use by the Agricultural Stabilization and Conservation Services (ASCS). By using the ASCS definition of a farmer, FmHA believes it will reduce confusion of the public over who is eligible to vote, since the two USDA agencies will share the same definition. Additionally, FmHA believes that by interpreting the definition of farmer broadly that it has afforded an opportunity for all persons who could be classified as farmers, within the intent of the law, an opportunity to vote. Restricting eligibility to current producers could exclude, for example, former or retired farmers who retain an interest in farming and whose knowledge and skill would therefore be lost to the committee and the public.

Ten respondents commented that there are insufficient guidelines governing the establishment of area committees by the State Director. The respondent believes that provision for establishing area committees when it has been determined that there are insufficient interested individuals is objectionable since many farmers are still unaware of the opportunity to serve as committee members. The Agency notes that an insufficient number of interested farmers is only one of four examples of cases where the formation of Area Committees should be considered. It has been the Agency's experience over the last two elections that an insufficient number of farmers interested in serving on the county committee generally coincides with a situation where there are few farmers and a low Agency Farmer Program workload. In such instances, good management dictates that consideration be given to forming area committees. The Agency has not received any complaints that area committees were formed when county committees were feasible. The Agency sees no compelling reason to limit State Director discretion in this matter.

Three respondents commented that it is unclear whether the announcement of boundary changes prior to establishment of an area committee must be done for regular or special elections. The respondents also believe the language relating to the State Director's authority to set special elections is unclear. The need to publish boundary changes prior to county committee elections is a requirement for all county committee elections, both regular and special. Since the regulations do not specify a limitation on this requirement, there is no need for further clarification. The Agency also believes that all the circumstances in which State Directors are authorized to call special elections are fully spelled out. The Agency does not believe that further elaboration is necessary.

Two respondents commented that the creation of an area committee should result in the need for a special election since the change in boundaries could result in some counties or parts of counties not being fairly represented. Where the formation of area committees results in permanent vacancies occurring on the newly formed committee, special elections may be necessary. The regulations already provide for that. However, the Agency does not believe that it is feasible to require that every county or part of a county have a representative. Since there are only two elected committee members, and all eligible individuals from within the area can run, it would be impossible to ensure the highest vote getters would not be from the same area. FmHA believes that Congress' intent that the committees be fairly represented of farmers in a given area is met by the regulations.

One respondent commented that when utilizing alternates, the County Supervisor should ensure that alternates replacing elected members be called to duty based on the number of votes the alternate received in the election. As discussed earlier, there is no requirement that alternates stand for election or be appointed with regard to votes received in an election, if any. Consequently, the Agency does not favor adoption of this proposal.

Two respondents commented that permitting alternates to serve out the unexpired terms is contrary to Congressional intent that there be two elected members on the committee at all times. The respondent suggested that permanent vacancies of elected members always be filled through special election. The Agency does not agree that the law requires that there be two elected members at *all* times. Rather the law states that two members shall be elected. It does not speak to the situation of how to fill permanent vacancies caused by elected members leaving. FmHA believes that permitting alternates who succeed elected members to serve out the respective terms of those members is consistent with generally accepted political practices of most jurisdictions. Therefore, no change is made to this provision.

Seven respondents proposed that the regulations be changed to limit county committee members from counseling prospective borrowers to only apply to borrowers from the county or area in which the member serves. FmHA disagrees and believes that it is important to the public's perception of the impartiality of committee members that they refrain from all such activities regardless of the jurisdiction of the prospective borrower. The Agency believes that a blanket prohibition from counseling borrowers is justified on the basis of the administrative burden that would result from having to make a case by case determination that the borrowers are inside or outside the county committee members' own county.

One respondent commented that provision prohibiting county committee members from knowingly making any loan to persons to which they are related within the second degree of consanguinity or affinity is unclear. The Agency agrees and we have changed the provision to cite the specific regulation FmHA Instruction that provides the appropriate definition of consanguinity.

One respondent commented that the intent of Congress in permitting eligible FmHA borrowers to serve on the county committee was meant to apply only to existing borrowers and should not apply to applicants. Hence, the respondent suggested that both borrowers and applicants be permitted to serve on the committee simultaneously. It has always been FmHA's interpretations that individuals were not ineligible to run for or serve on the county committee merely because they were applicants. However, since Congress specifically required that only one individual "eligible" for an FmHA loan may serve on the committee at any one time, FmHA believes that it has no choice but to interpret that as to include individuals who have been certified eligible for a loan insured or guaranteed by FmHA.

Three respondents commented that FmHA Instruction 2045–CC especially § 2045.1407, Prohibited Activities,

referenced in § 2054.1104(d) be quoted at length or made an attachment to the regulation so that candidates will not exclude themselves from running for the committee. FmHA indicated in the regulation that FmHA Instruction 2045–CC is available in any FmHA office for inspection. In addition, anyone interested in running may refer their questions to the local County Office.

One respondent suggested that county committee members not be made FmHA employees, but rather be independent contractors. The respondent believes that this would be preferable since the prohibition against politically active individuals serving on the committee would no longer be necessary. FmHA believes that it is important to the public's perception of the committees' impartiality that its members not engage in partisan politics.

Three respondents suggested that county committee members be exempt from the requirements of FmHA Instruction 2054–L, Restrictions on Employment of Farmers Home Administration Borrowers and Sons and Daughters of Borrowers. FmHA Instruction 2054–L applies only to full time employees. Since county committee members are intermittent employees, they are exempt from the provisions of FmHA Instruction 2054–L.

Six respondents expressed concern that the regulations barring FmHA employees from performing certain functions for FmHA financed associations or organizations applied to individuals who might be partners or employees or organizations attempting to get a loan from FmHA. The respondent also stated that if it was not the intent to exclude these individuals that the language of the regulation was unclear. FmHA agrees that the language is unclear. Consequently, the regulations are amended to reflect that this prohibition relates to those employees and officials of associations and organizations with FmHA-financed community facility or community business loans.

Five respondents stated that the requirements that an elected county committee member be eligible for Federal employment could result in elected committee members not being able to take office. Further, the respondent stated that this would permit the State Director to appoint an alternate in cases where elected members were later found ineligible for Federal employment. By necessity, the process of determining someone's eligibility for Federal employment is one that can only be accomplished after an individual has completed a variety of appointment documents which need to be verified. It is not the intent, however, of the regulations to permit a State Director to appoint an alternate in cases where an elected member cannot be appointed. In such cases, the next highest vote getter becomes the elected member.

The only time the regulations permit the appointment of alternates to succeed county committee members is when a permanent vacancy exists. This situation is not present until a member is appointed as a Federal employee and is terminated or resigns.

Twenty respondents stated that the requirement that the period for nominations end 20 days before the election is in conflict with the requirement that the period between the notice of election and the election be 30 days. The Agency agrees that this is incorrect. The regulations has been revised to state that the nomination period will be 45 days and will end 12 days prior to the Notice of Election.

One respondent suggested that pro-tem members not be appointed in cases where a full slate of candidates cannot be fielded for the elected county committee vacancies. Instead the respondent recommends leaving the existing committee members on until an election can take place. In practice, the pro-tem members that have been appointed in such cases have almost invariably been members whose terms have expired. However, since the terms of members are set by law, FmHA could not legally extend their appointments. Instead, they had to be reappointed on a pro-tem basis until a special election could be held and new appointments made.

Seven respondents stated that exhibits to the regulation which were not published should have been published in the **Federal Register**. It is USDA policy not to publish exhibits which are internal administrative guidance and which do not affect the public. The Agency believes that the information published in the **Federal Register** contained all the pertinent information necessary for the public to comment on.

Four respondents suggested that the regulations be amended to read that there is a presumption that an individual is a farmer if their spouse is an eligible farmer whose name appears on the ASCS producer list. The Agency agrees that this is reasonable, and has amended the regulation accordingly for both ballots voted in person and ballots voted on an absentee basis.

Three respondents commented that the 5 working days given for absentee voters to respond to questioned ballots was too short and recommended giving voters 10 working days to respond. The respondents also stated that it was unclear as to when the 5 day period started. The Agency policy on this is to attempt to contact the individuals telephonically if possible, and only to write if that method fails. It has been our experience that most questioned ballots can be dealt with verbally and do not require the voter to produce documentation. The regulation is clear that the 5 days began after the voter has been contacted. This has proved sufficient, and the Agency does not believe extending this period is necessary.

Three respondents stated that the regulation was unclear as to what "election requirements" ballots were being subjected to by the County Office staff at the time of the ballot count. This provision refers to separating valid from invalid votes. Since this process is described elsewhere in the section, this statement is redundant and is therefore deleted.

Three respondents commented that there is no justification for considering a ballot invalid because it has a write-in candidate. The Agency disagrees. The regulations call for nomination by petition to be the only method for developing slates of candidates. Since write-in candidates, by definition, would not have been nominated by petition their inclusion on a ballot is invalid. As a result the ballot is invalid.

One respondent commented that the provision which requires that designated and alternate committee members reside in the county or area in which the committee operates is inconsistent with eligibility requirements for elected members; i.e., elected members must have their principal farming operation in the county or area in which they serve. The Agency agrees that the criteria for residence for elected and designated members is different. However, this is a function of the different eligibility requirements for these different groups. Since the Agency does not require that designated members or alternates be farmers, it is necessary to ensure that such persons do represent the area where they are serving as committee members. Hence, this is accomplished by requiring that they maintain their residence in that county or area.

Five respondents commented that there is no provision for a grievance procedure for a borrower if he or she perceives there was a conflict of interest on the part of a committee member who is reviewing the person's loan application. Further, the respondent states that there is no provision for an individual to remove themselves from

considering a loan application if they have a conflict of interest. The Agency disagree with these statements. Firstly, loan applicants may appeal decisions of the county committee if they believe that their loan application was not properly considered. Secondly, since county committee members are Federal employees they are covered by applicable conduct regulations governing conflict of interest. Any committee member who believes that he or she has a conflict of interest that would affect their consideration of a loan are required by FmHA Instruction 2045–BB to exclude themselves from the process.

One respondent commented that spouses who are active in the farming operation should have their own vote. The Agency reviewed this comment and determined that the regulation already provides for this under § 2054.1106(a). Therefore, the Agency does not feel that any additional requirements are necessary.

One respondent commented that the Agency omitted a requirement that publications serving women, racial, and ethnic minorities be utilized in the nomination process. The overall requirements relating to notice to the public regarding the election process are contained in § 2054.1105(d) and this section does include a requirement that publications serving women, racial, and ethnic minorities be utilized in the full election process. Consequently, the Agency believes that no further elaboration of this requirement is necessary in other sections of the regulation.

Two respondents commented that the stipulation that designated county committee members be in general agreement with the objectives of FmHA was too vague and stated that the main purpose of FmHA should be quoted in the regulation. One respondent offered the following wording, "FmHA was established for the purpose of insuring tht family farmers keep control of their farms and that FmHA is the lender of last resort." The Agency has reviewed this comment and agrees that inclusion of the Agency's mission statement in the regulation would provide greater clarity. The Agency, however, does not agree with the respondent's definition of the Agency objectives. The Agency has provided the definition of its mission.

Three respondents commented that the provision in § 2054.1103(b) stating that county committee members are not prohibited from making inquiries concerning applicants and borrowers was unclear. The respondents suggested that the nature of the inquiries permitted be clarified in the regulation. The Agency believes that it would be counter productive to attempt to define permissiable contacts since this would lead to placing unnecessary limitations on normal interpersonal contacts. The Agency believes that this section is clear that prohibited contacts, in this context, are confined to counseling prospective borrowers regarding preparation of loan documents. Therefore, the Agency does not believe that it is useful to further define this provision.

One respondent commented that FmHA should use the same elections procedures used by ASCS and with little additional spending. At the time FmHA first defined its election procedures, consideration was given to following the ASCS model, but this ultimately had to be rejected to the irreconcilable differences between the laws the two agencies operate under.

Two respondents commented that the provision requiring that County Supervisors engage in community out reach and information activities designed to educate minorities and women on the nomination, election, or appointment process did not specify the methods to be undertaken or the system of evaluation. The Agency believes that the County Supervisors should have leeway in determining specific courses of action to accomplish this goal. Evaluation of the success of County Supervisors in bringing women and minorities into the county committee election process can be made through the annual performance appraisal process.

Two respondents commented that the regulations be changed to include a provision to require the mailing of nomination forms and ballots to all FmHA borrowers and all farmers who are non FmHA borrowers but listed on the county ASCS producer list. A similar comment was received that when ballots are mailed to the prospective voter that the envelope contain complete voting instructions. The Agency believes that the system of publishing ballots in publications serving the area and mailing ballots to those individuals who request them provides eligible voters with ample opportunity to vote. The Agency also believes that the voting instructions provides adequate information to the prospective voter. No changes in the regulation are necessary.

One respondent commented that the provision in the regulation that provides for the termination of the employment of county committee members by various means allows unilateral removal of county committee members without any explanation of the process or the reasons for removal. The Agency has reviewed this comment and determined that county committee members serve at the will of the Agency. Because county committee members serve at the will of the agency and because they are intermittent temporary employees in the excepted service, they do not have civil service status. Therefore, by law they are not entitled to an official appeal process and are subject to removal. However, the Agency has provided that all terminations for cause be reviewed by the Administrator. All county committee members who are removed through this process are given a letter from the State Director explaining the reason for the removal. The Agency believes that this process is adequate in protecting the rights of county committee members.

One respondent commented that the provision requiring that a nominating petition be signed by three eligible voters be changed to prohibit the nominee from signing the petition. The Agency has reviewed this comment and determined that there is nothing in the Law which prohibits individuals from nominating themselves for election as county committee members. Also, we believe that allowing self nominations is consistent with general election practices. No change is made to the regulation.

One respondent commented that the language in § 2054.1111(b) should be changed to specifically state that the County Supervisor or designated staff shall call for nominations during the nominating period. The Agency reviewed this comment and determined that the language as stated in the regulation is intended to convey that the methods of developing slates will be by the nomination process. We believe that further clarification of this provision is unnecessary.

One respondent commented that § 2054.1115(b) be deleted. The Agency reviewed this comment and determined that the Law does not prohibit FmHA employees from voting, if eligible. The Agency believes that this section is necessary in order to assure that FmHA employees are aware that they are entitled, if eligible, to vote. No change in this provision is necessary.

One respondent commented that it should be mandatory that information concerning elections be published in the ASCS newsletter. The Agency reviewed this comment and determined that the regulation provides for this under § 2054.1105(d). No change in the regulation is necessary.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation Statement

1. For reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, Intergovernmental Review of Farmers Home Administration Programs and Activities," (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Farm Labor Housing Loans and the Soil and Water Loans are subject to the provisions of Executive Order 12374 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.421 Indian Tribes and Tribal Corporation Loans

List of Subjects in 7 CFR Part 2054

Agriculture, County Committee members.

Therefore, Chapter XVII, Title 7 of the Code of Federal Regulations is amended by revising Subpart W of Part 2054 as follows:

PART 2054—EMPLOYMENT

1. The authority citation for Part 2054 continues to read as follows:

Authority: 7 U.S.C. 1989; U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart W, consisting of §§ 2054.1101-2054.1150, is revised to read as follows:

Subpart W—Employment, Pay, And Functions of County And/or Area Committees

Sec.

Subpart W—Employment, Pay, And Functions of County And/or Area Committees

§ 2054.1101 General.

This subpart provides instructions for selection of county committee members. Nomination, election, or designation of county committee members are made without regard to race, color, sex, religion, national origin, age, political affiliation, marital status, or handicap.

§ 2054.1102 Establishment and composition of county and/or area committees.

(a) *General.* In each county or area in which Farmers Home Administration (FmHA) activities are carried out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected by farmers. For this subpart, farmer is defined as any person who has an interest in a farm as owner, tenant, or sharecropper within the county or area. The term "farmer" shall include the spouse of an eligible farmer. One member, who shall reside within the county or area, shall be designated by the State Director. Designation may also be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting designated members of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of farmers in the county or area. Designated committee members must be in sympathy with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the mission of FmHA. The mission of FmHA is to provide supervised credit assistance through various loan and grant programs, to rural Americans by encouraging and supporting family farm ownership and operation to provide an economic and social base, provide adequate housing, install needed community facilities, provide economic support to farmers affected by disaster and foster economic and rural development. Designated committee members and alternates may also be farmers. However, if they are farmers, they need not meet the criteria in § 2054.1102(a)(1).

(3) It is FmHA policy that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible, to serve on county and/or area committees. Therefore, State Directors and/or County Supervisors will:

(i) Engage in community outreach and information activities designed to educate minorities and women on the nomination, election, selection, or appointment process for FmHA county committees.

(ii) Make efforts to obtain recommendations from civil rights and women's organizations.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts of two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low;

(3) More than one county office is necessary to service the workload of an individual county; or

(4) It has been determined that there are insufficient interested individuals to create a county committee in a single County Office's jurisdiction.

(c) *Action to create area committees.* When a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before

a county committee election takes place. If the establishment of an area committee will result in the elimination of a county committee and a surplus of elected county committee members, the State Director will take the following steps:

(1) Terminate one of the designated members of the two committees, if necessary.

(2) Poll the elected members of the committees as to their continued desire to serve, and accept resignations from those who voluntarily wish to resign in inverse order as to their remaining terms; i.e., 1 year, 2 years, 3 years.

(3) If a surplus of elected members still remain after taking steps (2) (paragraph (c)(2) of this section) the County Supervisor should have the members draw lots for the positions.

(4) In combining two county committees to create an area committee, the State Director must ensure that no more than one member of the reconstituted committee is a farmer eligible for a loan made or insured by FmHA. See § 2054.1104 for definition of persons eligible for an FmHA loan.

(d) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting. When utilizing alternates, the County Supervisor should ensure that no more than one member of the committee is a farmer eligible for a loan made or insured by FmHA.

(e) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order of succession at the State Director's discretion; e.g., first alternate, second alternate, and third alternate. This rule of succession is subject to the requirement that no more than one farmer eligible for an FmHA loan serve at the same time. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill the county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(f) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections. Committee members elected through special elections will serve out the remainder of the term of the position for which the election was called.

§ 2054.1103 Functions of the county and/or area committee.

(a) The functions which are subject to appropriate program Regulations, Civil Rights Laws, and Subpart E of Part 1901 of this Chapter to be performed by the committees, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans, irrigation and drainage loans to grazing associations;

(2) Classify or reclassify farm real estate property that is being suitable or unsuitable. Also, the county committee will be responsible for subdividing surplus property larger than family size whenever possible into parcels for the purpose of creating one or more suitable farm properties;

(3) Making recommendations on resolving problem cases;

(4) Conferring with the County Supervisor on the servicing of FmHA loans with respect to borrowers who should be referred to other credit sources, including graduation;

(5) Making recommendations regarding applications for compromise or adjustment or cancellation of debts owed to FmHA;

(6) When requested by the County Supervisor, advising the County Supervisor, debtors, and their creditors in connection with voluntary debt adjustment; and

(7) Attending appeal hearing authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and attend appeal hearing and training meetings in accordance with FmHA regulations. They may not counsel prospective borrowers regarding preparation of loan documents. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county or area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in § 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify all county committee members of meetings. Regardless of the method, all sitting members must be notified of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) At the first meeting after July 31 of each year, the members of the county committee will elect one member to serve as Chairperson for that year.

(e) The County Supervisor will prepare Form 2054–7, "Record of County/Area Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meetings as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and are farmers (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternates are found in § 2054.1102(a)(2) of this subpart. Any farmer eligible for a loan made or insured by FmHA shall be eligible to serve as an elected or appointed county committee member. Not more than one farmer eligible for a loan made or insured by FmHA may serve on a county committee at the same time. Persons will be considered "eligible" for an FmHA loan if they either currently have such a loan, or are certified applicants for such a loan. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have ever been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not currently be an officer or employee of a partisan political party, or be active in the management or affairs of any political club, organization, or committee. The general rules are contained in FmHA Instruction 2045–CC (available in any FmHA office). See especially §§ 2045.1402(b) (Coverage), 2045.1407 (Prohibited activities), and 2045.1410 (Accepting and holding State and local offices). Committee members are also subject to the prohibitions contained in Executive Order 11222 and Department of Agriculture (USDA) policy contained in Part 735, Departmental Personnel Manual (DPM) Supplement 990–1, with respect to holding public office.

(e) Not be employees of FmHA, Agricultural Stabilization and Conservation Service (ASCS), Soil Conservation Service (SCS), Extension Service (ES), Rural Electrification Administration (REA), Federal Crop Insurance Corporation (FCIS), or agents of these agencies.

(f) Not currently be an employee of a Federal Land Bank, Production Credit Association, or other Farm Credit System institutions, or serve on a committee which make recommendations for approval of loans by these organizations since FmHA may be involved in participation loans with such Farm Credit System loans.

(g) Not perform any of the following functions for an association or organization having FmHA-financed community facilities or community business loans after appointment:

(1) Serve as an official;

(2) Perform administrative or employee functions including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(h) Not currently be an employee or serve on Boards of Directors of Banks or Savings and Loan Associations or be the spouse of or a family member living in the same household with an individual serving on the board of such organizations in the county or area over which the county committee has jurisdication, since FmHA may be involved in participation loans with such banks.

(i) Meet the legal or regulatory requirements for appointment to Federal employment. (See § 2054.1126 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* Elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the areas, and, if possible, in ASCS and/or ES newsletters and through public service announcements on radio or television stations serving the area. To ensure participation of women and racial and ethnic minorities, publications in circulation serving these groups should also be utilized to provide information concerning the elections.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers; i.e., persons who have an interest in a farm as owner, tenant, or sharecropper or spouses of such persons, or be duly authorized representatives of a legal entity which has an interest in a farm.

(b) Have their principal farming operation within the county or area for which the election is being held.

§§ 2054.1107—2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Elections calendar.* An election calendar is provided as Exhibit C of this subpart (available in any FmHA office).

(1) The election calendar provides a sequence of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition will be 45 days and end 12 days before publication of the Notice of Election.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving the county or area and, if possible, in ASCS and/or ES newsletter and through public service announcements on radio and television stations serving the area. In addition, notices whall be posted in all FmHA offices within the area. The Notice of Right to Nominate by Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office.)

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations during the nominating period.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating petition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 12 days before the date of publication before the Notice of Election, whether delivered in person or by mail.

(4) Accompanied by a signed statement by the nominee certifying that he or she either currently meets the criteria to hold office, or will do so prior to taking office. If all the criteria are not met at the time the nomination is filed, the candidate must specify how he or she will meet the criteria; e.g., resign from a position listed in § 2054.1104 (d), (e), (f), (g), or (h).

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations during the nominating period.

(1) The petitions will be returned to the County Office for execution of Form 2054–5, "Nominating Petition."

(2) The completed Form FmHA 2054–5 must be in the County Office no later than 12 days before publication of the Notice of Election.

(3) The County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member and will retain a copy in the County Office files. See FmHA Guide Letter No. 2054–1, "Letter to Nominees" (available in any FmHA office).

(4) If less than the required minimum number of valid nominations are made by petition, the regular election will be cancelled, and the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held and elected members appointed. Pro tem appointments may be made not-to-exceed 120 days. If a special election fails to produce a sufficient slate of candidates, requests for extensions of pro tem appointments, with supporting justification, may be made to the Director, Personnel Division.

§§ 2054.1112—2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candidate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State may distribute additional ballots through means other than publications, as necessary. The announcement must be made at least 30 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots should be returned. Ballots shall also be available at the County Office. Ballots should be mailed as set forth in § 2054.1117 of the subpart to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS list of producers and checked from that list. A separate list must be maintained manually by the County Supervisor of those individuals voting in person or by absentee ballot in the county committee election. The ASCS producer list will be used by FmHA only as an indicator that the prospective voter has an interest in farming. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. The County Supervisor can challenge anyone presenting themselves to vote, if there is a reasonable basis to believe that the voter is not eligible to cast a ballot. However, the County Supervisor should count the vote of a prospective voter if his or her name is found on the ASCS list, is not otherwise known to be ineligible, and submits a ballot. If the prospective voter is not on the producer list, but can provide information that shows he or she is otherwise eligible, the voter should be permitted to vote. Spouses of farmers will be presumed eligible, regardless of whether their name appears on the ASCS list, if their spouses' name appears on the ASCS list. Individuals voting in person may only cast their own vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope with the County Office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope and return the ballot on or before the date set for the election. Upon receipt of the ballot, the name of the voter will be verified against the ASCS producer list, checked off that list, and added to the FmHA voter list. Spouses of farmers will be presumed eligible, regardless of whether their name appears on the ASCS list, if their spouses' name appears on the ASCS list. Absentee ballots are subject to the same review process as ballots voted in person. The County Supervisor may challenge any absentee ballot for which there is a reasonable basis to believe that the person voting is not eligible. In these cases, and in cases where the prospective voter is not on the ASCS list, the County Supervisor will hold the ballot in abeyance and write or otherwise contact the individual advising that he or she must provide a verbal explanation or documentation that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed 60 days after the election. All absentee ballots submitted by eligible voters will be placed unopened in the ballot box by the County Office staff. Each ballot must be mailed in a separate envelope with the name and address of the voter clearly marked on the outside of the envelope. If more than one ballot is mailed in the same envelope, all ballots contained therein will be invalid, the votes will not be counted, and the ballots will be destroyed 60 days after the election.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each County Office holding an election will provide a ballot box in the County Office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot count by County Office staff:

(a) Ballots shall be counted within 7 working days after the election.

(b) The counting process shall be in public, and shall be done in the County Office during regular working hours.

§ 2054.1120 Counting ballots and announcing results.

The County Office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses, if witnesses are present.

(c) Examine the ballots and separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart. Examples of invalid ballots are those that contain write-in candidates, more votes than are specified as being appropriate, or no clear vote.

(d) Call out the votes shown on the ballots.

(e) Review the final vote count and determine the candidate(s) elected.

(f) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

(g) Only those candidates who receive one or more votes can be elected. If less than the necessary number of candidates are elected to fill the vacant positions, special elections will be required for those seats left unfilled.

§§ 2054.1121-2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify successful candidates of election results in writing. See FmHA Guide Letter No. 2054-2, "Letter to Elected County Committee Members," (available in any FmHA office).

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Ballots should be retained for 60 days after the elections and then destroyed if no complaint or investigation is initiated.

(c) FmHA voter lists, and other election documents such as the nominating petitions, nominee's certification to hold office, etc., should be retained in the County Office files and disposed of after a period of 3 years.

§ 2054.1125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, § 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither retirement nor social security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) *Processing accessions.* To document selection of county committee members, specific remark codes have been assigned for use in processing the accession action (SF-52, "Request for Personnel Action," and AD-350A, "Change Action Notice,") for members. One of the remark codes listed below must be entered in Blocks 37 and 56, respectively. The National Finance Center (NFC) will supply the descriptive data and complete the remark.

(1) Elected county committee member—remark code 167—remark is—Employee elected as a county committee member.

(2) Designated as a county committee member—remark code 168—remark is—Employee designated as a county committee member.

(3) Designated as an alternate county committee member—remark code 169—remark is—Designated as an alternate county committee member.

(c) *Dual compensation.* A person may be appointed and paid as a county committee member while also holding another Federal appointment on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(e) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of the Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute a violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.* The State Director will make the necessary determinations in such cases in accordance with Federal Personnel Manual (FPM) Chapter 550, Subchapter 6, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(d) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form (SF) 171, "Personal Qualifications Statement," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054-6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. Although veteran's preference does not apply to county committee member appointments, copies of the DD-214 should be obtained from veterans in order to accurately establish Service Computation Dates (SCD) for members.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on the SF 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review SF 171 for completeness and conformity with requirements and will process Form AD-350A. The State Director will send a copy of Forms AD-350A, AD-349, "Declaration Sheet," SF-61, "Appointment Affidavits," I-9, "Employment Eligibility Verification," Treasury Form W-4, "Employee's Withholding Exemption Certificate," and State Income Tax Withholding form, where applicable, to the County Supervisor. The copy of Form AD-350A will be retained in the County Office committee file. FmHA Instruction 2045-BB and Appendix 1, "Employee Responsibilities and Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing Forms AD-349, SF-61, I-9, Treasury Form W-4, and State Income Tax Withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit must be recorded on Form AD-321-3, "Time and Attendance Report," before Form AD-349 is forwarded to the State Director. Failure to enter the date of the Appointment Affidavit on the Time and Attendance Report will delay the committee member's pay. Form AD-349 must be executed in its entirety. The State Director will forward the "Employee Copy" of the SF 50B "Notification of Personnel Action" printout produced by NFC to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment. Terms of appointments are for three years except in cases where the appointee is completing the unexpired term of a former member.

(6) Elected county committee members will be issued a "Certificate of Election" by the County Supervisor. These certificates can be reordered only the State Offices. When ordering from the warehouse, State Offices should ask for Item No. 410, "Certificate of Election."

(e) County committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B, "Employee Responsibilities and Conduct."

§ 2054.1127 Compensation.

(a) *Commuting time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county members who, at the request of County Supervisors, attend county committee meetings for training and/or orientation purposes are entitled to compensation even if all three regular county committee members are present.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some cases as outlined in § 2054.1126(c) (3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $30 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the County Office or other place where county committee meetings are normally held, as provided on the following chart:

One-way mileage from residence to meeting place	Salary	Allowance	Total
25 or less	$30	$6	$36
25 to 50	30	9	39
51 and over	30	12	42

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where the meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after: the change in residence; or the first meeting at the new regular location. Changes in allowance in lieu of travel and subsistence will not be made for attendence to training meetings, appeal hearings, or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form 2054–6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by § 2054.1128 of this subpart are submitted.

(3) A revised certification on Form FmHA 2054–6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has been changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking odometer readings. Otherwise, the certification will be based on actual odometer readings.

(5) The odometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile. All certification will be prepared in duplicate, with a copy retained in the County Office.

§ 2054.1128 Certification of services.

The County Supervisor will certify biweekly on Form AD–321–3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to the expiration of the appointment, the State Director will process Form AD–350A. The Employee's copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054–4, "Separation Notice to County Committee Members," or other suitable letter from the State Director to the committee member. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be properly documented. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible (see § 2054.1102(e) of this subpart).

(b) *Other separations.* (1) The County Supervisor will inform members that they no longer meet eligibility requirements when they enter military service. Elected members will lose eligibility if they no longer maintain their principal farming operation in the county or area they represent. Designated and alternate members will lose their eligibility if they move from the area. In all cases the County Supervisor will so notify the State Director. If a resignation is not promptly submitted, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If a County Supervisor or other FmHA officials have information concerning the personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report to the Administrator. The report should be sent to the attention of the Director, Personnel Division. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) No member of a county committee shall knowingly make or join in making any certification with respect to a loan to purchase any land in which he or any person related to him within the second degree of consanguinity or affinity has or may acquire any interest or with respect to any applicant related to him within the second degree of consanguinity or affinity. § 2045.1352(f) of FmHA Instruction 2045–BB provides definition of consanguinity or affinity (available in any FmHA office). Should this provision be violated, those FmHA officials having information will take action in accordance with § 2054.1129(b)(4).

(6) Where termination is due to the expiration of appointment, a termination action is not necessary. NFC will automatically drop the county committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§§ 2054.1130—2054.1149 [Reserved]

§ 2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and assigned an OMB control number 0575–0117.

Date: March 15, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–6492 Filed 3–23–88; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final amendment.

SUMMARY: This amendment revises § 701.20 of NCUA's Regulations—Surety Bond and Insurance Coverage for Federal Credit Unions ("FCU's"). It is issued both pursuant to NCUA's regulatory review process and to conform the regulation to the Competitive Equality Banking Act of 1987. Section 701.20 sets forth the requirements for surety bond coverage for losses caused by Federal credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union (e.g., losses due to theft, vandalism). This amendment eliminates the requirement of faithful performance coverage for the financial officer of a Federal credit union. It eliminates the requirement that bonding companies be approved by NCUA. It also eliminates reference to certain bond forms which are no longer in use. Finally, it states that any bond form not previously approved by the NCUA Board, or a rider or endorsement which limits the coverage provided by approved bond forms, must receive the written approval of the NCUA Board before being marketed to credit unions.

EFFECTIVE DATE: March 24, 1988.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, General Counsel, or Allan Meltzer, Assistant General Counsel, at the above address, or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: The surety bond regulation was last revised in 1984. Pursuant to its regulatory review program, the NCUA Board has determined that several changes should be made in § 701.20(c). In addition, the Competitive Equality Banking Act of 1987 deleted from the Federal Credit Union Act the statutory requirement of faithful performance coverage for the financial officer.

On November 12, 1987, the NCUA Board requested comment on a proposal to: (1) Eliminate the regulatory requirement of faithful performance coverage for the financial officer; (2) eliminate the requirement that bonding companies be approved by the NCUA Board; (3) eliminate approval of certain bond forms no longer in use by surety companies. The proposal also would require that all riders and changes to basic bond forms be approved by the NCUA Board prior to their use.

A total of 29 comment letters were received. Twenty two were from federal credit unions, three from state chartered, federally insured credit unions, 1 from a credit union league, two from national credit union trade associations, and one from a surety bond company. Essentially three issues were addressed. They are discussed below.

Faithful Performance

The proposed rule noted that while the Competitive Equality Banking Act of 1987 deleted the statutory requirement that the financial officer be covered for faithful performance, the NCUA Board nevertheless had the authority to require the coverage for the financial officer or any other credit union official or employee.

In fact, for many years Federal credit unions were required to maintain faithful performance coverage on all employees. The Federal Credit Union Act required the coverage for the financial officer and NCUA's rules required it for other employees. In 1984, NCUA amended its rules to eliminate the requirement for employees other than the financial officer. There were a number of reasons for this change. Faithful performance bond coverage had been construed by the courts as covering losses caused by simple negligence, or in other words, losses that involved bad management decisions but no fraud or dishonesty. This resulted in bond coverage that was extremely expensive and that in effect duplicated protections that were already provided by credit union capitol and, in more recent years, share insurance. It also resulted in a considerable amount of litigation over what conduct constituted a lack of faithful performance, increasing expenses for both underwriters and credit unions. It also may have contributed to bond underwriters being unwilling to write credit union coverage, with the result that one company now writes over 95 percent of all credit union fidelity bonds. It was to partially address these conditions that the Board amended the rules to eliminate the requirement for employees other than the financial officer.

The requirement of faithful performance coverage for the financial officer was a statutory requirement, outside of NCUA's regulatory discretion until Congress recently amended the Act. When Congress eliminated the statutory requirement, NCUA responded by proposing to eliminate its regulatory requirement. It was made clear at the time, as it should be now, that fraud and dishonesty coverage continue to be required for all officials and employees, and that individual FCU boards of directors are free to purchase additional coverages, including faithful performance, to the extent they are made available.

This proposal to eliminate the faithful performance requirements drew the most comments. The responses were somewhat mixed. Fifteen commenters favored deleting the requirement of faithful performance coverage. Eight objected to deleting it. One concurred with reservations.

Those commenters who support the proposal did so for two basic reasons. First, they agreed that the decision to maintain faithful performance coverage is one for a credit union's board of directors to make, and second, they expressed hope that deleting the coverage would control bond premium costs. Strong feelings were expressed over the increases in surety bond premiums over the last few years.

Those opposing the proposal believed that it would increase the financial risk to credit unions and the NCUSIF. These commenters apparently believe that the increased risk to the NCUSIF outweighs the anticipated savings in bond premiums. But, as one commenter supporting the change stated, there is no evidence that dropping the requirement of faithful performance coverage would subject the NCUSIF to substantial or

undue risk. In this connection it is noted that basic fraud and dishonesty coverage will cover some losses that may have been filed as faithful performance claims in the past. Also, it is expected that many credit unions will continue to purchase faithful performance as an optional coverage for an additional premium. Those credit unions are encouraged to carefully review the coverage received, as new definitions of "faithful performance" may limit the traditional scope of the coverage.

After careful consideration of the comments, the Board has repealed the regulatory requirement of faithful performance coverage. The Board believes this decision provides a desired degree of management discretion to credit union boards of directors. Also, with this change, credit union bond requirements will now be comparable to those currently being met by other underwriters in the banking and savings and loan industries, thus opening the possibility of additional competition for credit union bond business. While the Board is generally satisfied with the condition of credit union fidelity coverage, this change will help to ensure that pricing and claims payment experience remain fair and competitive.

Company Approval

The proposal also would delete the requirement that companies marketing surety bond policies be approved by the NCUA Board, leaving in place the statutory requirement that the companies hold a certificate of authority from the Secretary of the Treasury.

Three commenters concurred with the proposal, generally feeling that approval by the Secretary of the Treasury was sufficient. One objected to the proposal, arguing that the NCUA is in a better position than the Treasury Department to determine which requirements should be met by an insurance company marketing to credit unions. In light of the clear language employed by the Congress in the Federal Credit Union Act, the final rule remains as proposed, and approval of surety bond companies by the NCUA Board will no longer be required.

Bond Forms

The proposal approved Standard Form No. 23 and Blanket Bond Forms 581 and 582. It was proposed that references to several other obsolete bond forms be deleted. The proposal further provided that all other bond forms and riders be approved in writing by the Board prior to being marketed to credit unions.

Three commenters agreed with the deletion of obsolete bond forms. No commenter objected. However, two commenters suggested that the requirement of prior written approval of riders and forms be modified. They noted that several riders currently being marketed to credit unions provide coverage beyond that required as a minimum. Requiring prior written approval of these riders would unnecessarily delay implementation of new optional coverage. It was therefore suggested that prior written approval be required only of riders that limit required coverage.

The Board agrees that requiring prior written approval of *all* bond forms and riders might unnecessarily complicate the process of issuing optional coverages. Accordingly this final rule only requires that any basic bond forms other than those approved, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of NCUA. This limitation balances the needs of the NCUA with the benefits to be derived from the ability to market products to the credit union industry in a timely and responsive fashion. The NCUA however will be the final arbiter in determining whether a particular rider requires such approval.

The change made in the final rule is as follows. The third sentence in § 701.20(c) is changed to read—"Any other basic bond forms, and all riders and endorsements which limit coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board."

Federally-Insured State-Chartered Credit Unions

While § 701.20 applies only to Federal credit unions, § 741.1 establishes the requirements of 701.20 as minimum standards for all federally-insured credit unions. Thus, depending on bonding requirements under state law and regulations, this final rule will affect federally-insured state-chartered credit unions in some states.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. The rule will not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The revised regulation does not impose any additional paperwork requirements.

List of Subjects in 12 CFR Part 701

Credit unions, Fidelity bond, Insurance coverage, Bond forms.

By the National Credit Union Administration Board on March 16, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—[AMENDED]

1. The authority citations for Part 701 continue to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.20(c) of the NCUA Rules and Regulations is revised to read as follows:

§ 701.20 [Amended]

* * * * *

(c) *Minimum Coverage; Approved Forms.* Every Federal credit union will maintain bond and insurance coverage with a company holding a certificate of authority from the Secretary of the Treasury. Credit Union Blanket Bond Standard Form No. 23 of the Surety Association of America (revised to May, 1950) is considered the minimum coverage required and is approved. Credit Union Blanket Bond Forms 581 and 582 are also approved. Any other basic bond forms, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board. Fidelity bonds must provide coverage for the fraud or dishonesty of all employees, directors, officers, and supervisory and credit committee members.

[FR Doc. 88-6421 Filed 3-23-88; 8:45 am]

BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

[Amdt. 6]

Display of Office of Management and Budget Control Numbers for Reporting and Recordkeeping Requirements

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its

regulations to indicate Office of Management and Budget (OMB) approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: William Cline, Chief, Administrative Information Branch, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416. Telephone No. 653–8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented by 5 CFR Part 1320 that agencies display a current listing of OMB control numbers and expiration dates. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

Therefore, 13 CFR Part 133 is amended as follows:

PART 133—[AMENDED]

1. The authority for Part 133 continues to read as follows:

Authority: 44 U.S.C. 3512.

2. The table in paragraph (c) of § 133.1 is revised to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

* * * * *

(c) * * *

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245–0003	SBA 745	13 CFR 125.9	10–31–88
	SBA 745A		
3245–0007	SBA 990	15 U.S.C. 6942, 6946	5–31–89
	SBA 994	13 CFR Part 115	
	SBA 994B		
	SBA 994C		
	SBA 994F		
	SBA 994H		
	SBA 994J		
3245–0012	SBA 770	13 CFR 123.9	10–31–90
3245–0013	SBA 74	13 CFR 125.5	3–31–89
	SBA 74A		
	SBA 74B		
	SBA 183		
3245–0015	SBA 1010 A–E, I	Pub. L. 95–507	9–30–90
		Pub. L. 96–481	
		13 CFR 124.1	
3245–0016	SBA 4	13 CFR 122.309	10–31–90
	SBA 4I		
	SBA 4 Sched. A		
3245–0017	SBA 5	13 CFR Part 123	10–31–89
	SBA 739A		
	SBA 1368A, B, C		
3245–0018	SBA 5C	13 CFR 123.1	4–30–90
	SBA 739		
3245–0019	SBA 933	13 CFR 101.2–7	3–31–88
	SBA 1099		
	SBA 1100		
3245–0020	SBA 1136	13 CFR 111.8	6–30–88
	SBA 1136A		
3245–0046	SBA 1174	13 CFR 101.2–7	9–30–89
3245–0062	SBA 415	13 CFR 107.102	7–31–90
	SBA 415A		
3245–0063	SBA 468.1, .2, .3, .4		6–30–88
3245–0071	SBA 1244 A & B	13 CFR 108.503	8–31–88
3245–0073	SBA 1246	13 CFR 108.503	9–30–90
3245–0074	SBA 1253 A & B	13 CFR 108.503	10–31–89
3245–0075	SBA 20	13 CFR 101.2–7	4–30–90
3245–0076	SBA's Nondiscrimination Rules and Regulations and SBA 793	13 CFR 112.9, 113.5	8–31–88
3245–0077	Reporting and Recordkeeping Requirements on Non-Bank Lenders	13 CFR 120.303	10–31–90
3245–0078	SBA 1031	13 CFR 107.1102	4–30–90
3245–0079	SBA 419		10–31–90
3245–0080	SBA 1081		4–30–90
3245–0081	SBA 25		4–30–90
	SBA 26		
	SBA 27		
	SBA 28		
	SBA 33		
	SBA 34		
	SBA 444C		
	SBA 1022		
	SBA 1022A		
	SBA 1065		
3245–0083	SBA 415C	13 CFR 107.1105	9–30–90
3245–0084	SBA 700	13 CFR Part 123	11–30–90

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0090	SBA 59	13 CFR 101.2-7	4-30-90
3245-0091	SBA 641	13 CFR 101.2-7	12-31-90
3245-0092	SBA 610	13 CFR 101.2-7c	8-31-88
3245-0095	SBA 1175		6-30-88
3245-0096	SBA 883	Presidential Proclamation Designating Small Business Week	1-31-90
3245-0101	SBA 355, 1340	13 CFR Part 121	3-31-88
3245-0108	SBA 1062	13 CFR 101.2-7	6-30-88
3245-0109	SBA 857	13 CFR 107.1101	7-31-90
3245-0110	SBA 1366 SBA 1391	13 CFR 123.17	4-30-90
3245-0112	SBA 1301	13 CFR 108.503	7-31-90
3245-0114	SBA 1302		7-31-90
3245-0116	SBA 860	13 CFR 107.1101	7-31-90
3245-0117	SBA 266 CO		6-30-89
3245-0118	SBA 856	13 CFR Part 107	6-30-89
3245-0121	Governor's Request for Disaster Declaration	13 CFR 123.1101	7-31-90
3245-0123	SBA 888	13 CFR 101.2-7	10-31-88
3245-0125	SBA 898	Pub. L. 92-463	7-31-89
3245-0129	SBA 1238A		8-31-89
3245-0130	SBA 1238		8-31-89
3245-0131	SBA 172	Agency's Participant Handbook	7-31-89
3245-0132	SBA 1149		11-30-90
3245-0133	SBA 2014A	Pub. L. 95-454	9-30-89
3245-0134	SBA 1369	13 CFR 101.2-7	9-30-89
3245-0135	SBA 1202	13 CFR 101.2-7	8-31-89
3245-0136	SBA 987	13 CFR 123.1	8-31-89
3245-0137	SBA Contract Requirements	OMB Circulars A-110; A-21; A-102; A-122	8-31-89
3245-0140	SBA Grants Management Reporting and Recordkeeping Requirements SBA 1222, 1223, 1224	OMB Circulars A-110; A-102; A-122; SOP 00 11	9-30-88
3245-0143	Request for Eligibility Reconsideration	13 CFR Part 124	1-31-90
3245-0144	SBA 1017	13 CFR Part 124	1-30-90
3245-0145	Notice of Change in Ownership	13 CFR Part 124	1-31-90
3245-0146	SBA Request for Approval of Joint Venture Agreement	13 CFR Part 124	1-31-90
3245-0147	Request for Fixed Program Participation Term (FPPT) Extensions	13 CFR Part 124	1-31-90
3245-0148	Request for Advance Payment and Schedule of Advance Payment Requirements.	13 CFR Part 124	1-31-90
3245-0149	Request for Business Development Expense	13 CFR Part 124	1-31-90
3245-0151	Submission of Business Financial Statement	13 CFR Part 124	1-31-90
3245-0157	SBA 1386	Pub. L. 97-219	11-30-89
3245-0158	SBA 1183		4-30-90
3245-0159	SBA 712		4-30-90
3245-0160	SBA 149	13 CFR 122.15	9-30-90
3245-0164	Liquidation Activities	41 CFR Part 5	4-30-90
3245-0168	Small Business Institute Counseling Case Report	13 CFR 101.2-7	4-30-90
3245-0169	SBDC Quarterly and Financial Reports	13 CFR 101.2-7	2-28-90
3245-0171	Nominate A Small Business Person or Advocate of the Year		11-30-88
3245-0172	SBA 1405	13 CFR 107.1101	2-28-90
3245-0176	SBA 747	13 CFR Parts 112, 113, and 117	5-31-90
3245-0178	SBA 912		5-31-90
3245-0183	SBA 1419	13 CFR 101.2-7	7-31-90
3245-0185	SBA 1085 SBA 1086 SBA 1502	13 CFR Part 120	8-31-90
3245-0186	Economic Research Project Office of Advocacy, "Informal Investor Survey in the Eastern Great Lakes".	Pub. L. 94-305	8-31-88
3245-0188	SBA 413	15 U.S.C. 631	10-31-89
3245-0189	Business Loan Reconsideration Request	13 CFR Part 122	9-30-90
3245-0190	SBA 1347	13 CFR Part 122	11-30-90
3245-0191	Reporting and Recordkeeping Requirements	13 CFR Parts 120 and 122	10-31-90
3245-0192	Other Development Company Reporting Requirements	13 CFR Part 108	6-30-90
3245-0193	SBA 1429	13 CFR Part 108	4-30-90
3245-0194	SBA 1434	13 CFR 101.2-7	1-31-88
3245-0196	Borrower Reports, Records and Requests	13 CFR Part 122	10-31-90
3245-0199	Information Submitted by the Federal Agencies Participating in the SBIR Program to Small Business Administration for the SBIR Annual Report to Congress.		4-30-89
3245-0200	SBA 1050	13 CFR Parts 120 and 122	11-30-90
3245-0201	SBA 147 SBA 148 SBA 159 SBA 160 SBA 160A SBA 529B SBA 928 SBA 1059	13 CFR Parts 120 and 122	11-30-90

Current OMB Control No.	Information collection requirement	Legal authority	Expiration date
3245-0202	SBA 1010H	Pub. L. 95-507	1-31-91
3245-0203	SBA 104A		11-30-90
3245-0204	SBA 1449	Pub. L. 95-89	1-31-88
3245-0205	SBA 1450	13 CFR Part 124	8-31-90
3245-0212	SBA 1088	Pub. L. 98-352	9-30-90
3245-0213	SBA 1454 SBA 1455	13 CFR Part 122	12-31-88
3245-0215	SBA 1479		7-31-88
3245-0217	Measuring the Costs of Producing Bank Services in a Deregulated Environment.		3-31-88
3245-0218	SBA 1482	Pub. L. 96-481	10-31-88
3245-0221	SBA 1496	13 CFR 101.2-7	1-31-90
3245-0224	Erroneous Penalties Assessed by IRS Associated with Payroll Taxes.	Pub. L. 94-305	1-31-88
3245-0225	SBA 1531	Pub. L. 98-577 15 U.S.C. 647b	2-29-90
3245-0226	SBA 1538	Pub. L. 95-507	10-31-88
3245-0227	SBA 1539	Pub. L. 95-507	10-31-88
3245-0228	SBA 1540	Pub. L. 95-507	5-31-89
3245-0229	For Profit Cosponsored Training Program		6-30-88
3245-0232	SBA 1547	13 CFR 122.5.2 15 U.S.C. 631	7-31-89
3245-0234	Prebusiness Workshop Evaluation	13 CFR 101.2-7c	9-30-88
3245-0235	SBA 1551	13 CFR 129.2	9-30-88
3245-0236	Prompt Payment—Does Government Pay on Time?	Pub. L. 94-305 15 U.S.C. 634(b)(5)	9-30-88
3245-0237	SBA Recruitment Mailing List Survey		4-30-88
3245-0238	SBA 1553	13 CFR 122.5-2 15 U.S.C. 631	10-31-90
3245-0241	Procurement—Related Paperwork: Barriers to Small Business	Pub. L. 94-305 15 U.S.C. 634(b)(5)	8-31-88
3245-0243	SBA 641A	13 CFR 101.2-7c	12-31-90

James Abdnor,

Administrator.

[FR Doc. 88-6268 Filed 3-23-88; 8:45 am]

BILLING CODE 8025-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 601

Statement of Organization

AGENCY: United States Arms Control and Disarmament Agency.

ACTION: Final rule.

SUMMARY: The agency is amending the description of its organization and functions to reflect the establishment an Office of Inspector General at the Agency by section 6(a) of the Arms Control and Disarmament Amendments Act of 1987 (Pub. L. 100-213).

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Walter L. Baumann, Assistant General Counsel, Washington, DC 20451, telephone 202-647-3530.

SUPPLEMENTARY INFORMATION: This information is published in compliance with section 552(a)(1) of Title 5, United States Code, and 1 CFR 305.76-2.

List of Subjects in 22 CFR Part 601

Organization and functions (government agencies), Arms control.

Accordingly, 22 CFR Part 601, is amended to read as follows:

PART 601—[AMENDED]

1. The authority citation for Part 601 continues to read as follows:

Authority: Sec. 1, Pub. L. 90-23, 81 Stat. 54 [5 U.S.C. 552(a)(1)); Title II, Pub. L. 87-297, 75 Stat. 632, as amended (22 U.S.C. 2561 et seq.); and sec. 41(h), Pub. L. 87-297, 75 Stat. 636, as amended (22 U.S.C. 2581(i)).

2. In § 601.6 the last sentence of paragraph (d) is revised to read as follows:

§ 601.6 Structure.

* * * * *

(d) * * * Other organizational units with staff responsibilities are the Office of the General Counsel, the Office of Congressional Affairs, the Office of Public Affairs, the Office of Administration, and the Office of the Inspector General.

3. Section 601.19 is added to read as follows:

§ 601.19 Office of the Inspector General (OIG).

This Office is headed by the Inspector General of the Agency who has the duties, responsibilities, and authorities specified in the Inspector General Act of 1978. The Inspector General of the Agency utilizes personnel of the Office of the Inspector General of the Department of State in performing the duties of Inspector General of the Agency.

Dated: March 15, 1988.

William J. Montgomery,

Administrative Director.

[FR Doc. 88-6401 Filed 3-23-88; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 9

[Order No. 1262-88]

Technical Amendment of Regulations Governing the Remission or Mitigation of Civil and Criminal Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order revises 28 CFR 9.3(a) by adding a procedural requirement that a copy of a petition for remission or mitigation of a judicial forfeiture be submitted to the agency which seized the property for forfeiture. The addition is intended to expedite the processing of petition reports by the seizing agencies and to conform 28 CFR

Part 9 to the forfeiture notice procedures used by the seizing agencies for potential petitioners.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, Department of Justice, Washington, DC 20530. Telephone: (202) 786-4950.

SUPPLEMENTARY INFORMATION: This order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 9

Seizures and forfeitures.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, and 524, Title 28 of the Code of Federal Regulations is hereby amended as follows:

PART 9—[AMENDED]

1. The authority citation for Part 9 continues to read as follows:

Authority: 28 U.S.C. 509, 510, and 524; 5 U.S.C. 301; Reorganization Plan No. 1 of 1968.

2. Section 9.3(a) is amended by adding the following sentence to the end to read as follows:

§ 9.3 Procedure relating to petitions is judicial forfeitures.

(a) * * * A copy of the petition shall be submitted also to the local or regional office of the seizing agency that covers the judicial district in which the seizure occurred, except in DEA cases where the petition shall be submitted to DEA headquarters, Office of Chief Counsel.

* * * * *

Date: March 14, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-6385 Filed 3-23-88; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule and continuation of stay.

SUMMARY: MSHA is issuing as a final rule amendments to the Safety Standards for Methane in Metal and Nonmetal Mines which were published as an interim final rule on October 27, 1987 (52 FR 41394). MSHA is also continuing until further notice the stay of the standard that requires blasting from the surface in Subcategory I-A mines to permit the completion of research currently underway.

EFFECTIVE DATE: March 24, 1988; § 57.22601 is stayed until further notice.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances, MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION: On October 27, 1987, MSHA published interim amendments to two sections of the Safety Standards for Methane in Metal and Nonmetal Mines: § 57.22228, addressing pre-shift examinations in Subcategory I-A, I-C, II-A, Category III and Subcategory V-A mines; and § 57.22234, addressing actions at 1.0 percent methane in Subcategory I-A, I-B, V-A, V-B and Category III mines. The Agency solicited public comment on these amendments. No comments were received.

The Agency also published additional explanation clarifying the intent of standards which were not amended. Among the standards clarified were §§ 57.22218 and 57.22221 concerning seals and stoppings and overcast and undercast construction. One commenter urged MSHA to be cautious in allowing polyurethane foam as sealants or coatings under these standards because of the risk of ignition and the release of toxic gases. MSHA acknowledges these concerns and will carefully monitor any possible use of these materials in mines.

Finally, the Agency solicited public comment on a stay of § 57.22601 which requires blasting from the surface in Subcategory I-A mines. Comments and information on the stay received from an association of mine operators and the Bureau of Mines requested that the stay continue in effect until cooperative research to develop safe procedures for underground blasting in oil shale mines can be completed. The research is expected to be completed in 1989. MSHA will therefore continue the stay until further notice. Future action to lift the stay or revise § 57.22601 will be subject to public rulemaking procedures.

List of Subjects in 30 CFR Part 57

Chemicals, Fire prevention, Gases, Mine safety and health.

Date: March 17, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Subpart T, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 57—[AMENDED]

1. The authority citation for Subpart T continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22228(e) is revised to read as follows:

§ 57.22228 [Amended]

* * * * *

(e) Except in Subcategory I-C or Category III mines, vehicles used for transportation when examining the mine shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

3. The first sentence of § 57.22234(a) is revised to read as follows:

§ 57.22234 [Amended]

(a) If methane reaches 1.0 percent in the mine atmosphere, ventilation changes shall be made to reduce the methane. * * *

* * * * *

§ 57.225601 [Stayed]

4. Section 57.22601 is stayed until further notice.

[FR Doc. 88-6378 Filed 3-23-88; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 342, and 351

[Department of the Treasury Circulars No. 653, Tenth Revision; Public Debt Series No. 3-67, Second Revision; and No. 1-80, Second Revision]

U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice providing update of tables showing the redemption values and investment yields of United States Savings Bonds/Notes.

SUMMARY: This notice updates the tables set forth in the offering circulars for Series E/EE savings bonds and savings notes. The tables reflect the redemption values and investment yields for accrual dates occurring April 1, 1988 through October 1, 1988, for Series E/EE savings bonds and savings notes.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney Adviser, Office of the Chief Counsel, Bureau of the Public Debt, Washington, DC 20239-0001, (202) 376-4320.

SUPPLEMENTARY INFORMATION: This notice updates the tables reflecting the investment yields of Series E/EE savings bonds and savings notes. Department of the Treasury Circulars No. 653 (Series E), Public Debt Series No. 1-80 (Series EE) and No. 3-67 (Saving Notes) are hereby supplemented by the addition of tables showing the redemption values and investment yields for accrual dates occurring April 1, 1988 through October 1, 1988. It should be noted that the tables reflect the market-based variable yields described in the offering circulars at 31 CFR 316.8(b)(2)(C)(iii) for Series E savings bonds, 31 CFR 351.2(f)(2) for Series EE savings bonds, and 31 CFR 342.2a(b)(2) for savings notes. The values shown apply only where the securities are actually paid. They do not form the basis for future accruals.

Procedural Requirements

This notice is not considered a "major rule" for purposes of Executive Order 12291. A regulator impact analysis, therefore, is not required.

The notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Parts 316, 342, and 351

Banks and banking, Federal Reserve System, Government securities.

Dated: March 10, 1988.

Gerald Murphy,

Fiscal Assistant Secretary.

Accordingly, pursuant to the authority of Department of the Treasury Circular No. 653, Tenth Revision (31 CFR, Part 316), Public Debt Series No. 3-67, Second Revision (31 CFR Part 342), and No. 1-80, Second Revision (31 CFR Part 351), the following updated tables are provided:

BILLING CODE 4810-40-M

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$7.50	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00
DENOMINATION	10.00	25.00	50.00	100.00	200.00	500.00	1000.00

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/48 THRU 5/48	5/1/88	52.44	131.09	262.18	524.36	1048.72	2621.80	5243.60	8.50%	8.50%	8.50%
6/48 THRU 10/48	6/1/88	53.29	133.23	266.46	532.92	1065.84	2664.60	5329.20	8.50%	8.50%	8.50%
11/48 THRU 11/48	5/1/88	51.61	129.03	258.06	516.12	1032.24	2580.60	5161.20	8.50%	8.50%	8.50%
12/48 THRU 4/49	6/1/88	52.45	131.12	262.24	524.48	1048.96	2622.40	5244.80	8.50%	8.50%	8.50%
5/49 THRU 5/49	5/1/88	50.80	126.99	253.98	507.96	1015.92	2539.80	5079.60	8.50%	8.50%	8.50%
6/49 THRU 10/49	6/1/88	52.94	132.35	264.70	529.40	1058.80	2647.00	5294.00	8.50%	8.50%	8.50%
11/49 THRU 11/49	5/1/88	51.27	128.18	256.36	512.72	1025.44	2563.60	5127.20	8.50%	8.50%	8.50%
12/49 THRU 4/50	6/1/88	51.92	129.80	259.60	519.20	1038.40	2596.00	5192.00	8.50%	8.50%	8.50%
5/50 THRU 5/50	5/1/88	50.29	125.72	251.44	502.88	1005.76	2514.40	5028.80	8.50%	8.50%	8.50%

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(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
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U.S. SAVINGS BONDS SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)						ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
6/50 THRU 10/50	6/1/88	127.45	254.90	509.80	1019.60	2549.00	5098.00	8.50%	8.50%	8.50%
11/50 THRU 11/50	5/1/88	123.43	246.86	493.72	987.44	2468.60	4937.20	8.50%	8.50%	8.50%
12/50 THRU 12/50	6/1/88	125.27	250.54	501.08	1002.16	2505.40	5010.80	8.50%	8.50%	8.50%
1/51 THRU 4/51	7/1/88	125.27	250.54	501.08	1002.16	2505.40	5010.80	8.50%	8.50%	8.50%
5/51 THRU 5/51	5/1/88	121.33	242.66	485.32	970.64	2426.60	4853.20	8.50%	8.50%	8.50%
6/51 THRU 6/51	6/1/88	123.13	246.26	492.52	985.04	2462.60	4925.20	8.50%	8.50%	8.50%
7/51 THRU 10/51	7/1/88	123.13	246.26	492.52	985.04	2462.60	4925.20	8.50%	8.50%	8.50%
11/51 THRU 11/51	5/1/88	119.24	238.48	476.96	953.92	2384.80	4769.60	8.50%	8.50%	8.50%
12/51 THRU 12/51	6/1/88	120.97	241.94	483.88	967.76	2419.40	4838.80	8.50%	8.50%	8.50%
1/52 THRU 4/52	7/1/88	120.97	241.94	483.88	967.76	2419.40	4838.80	8.50%	8.50%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/52 THRU 5/52	7/1/88	120.51	241.02	482.04	964.08	2410.20	4820.40	48204.	8.50%	8.50%	8.50%
6/52 THRU 8/52	8/1/88	120.78	241.56	483.12	966.24	2415.60	4831.20	48312.	8.50%	8.50%	8.50%
9/52 THRU 9/52	5/1/88	116.98	233.96	467.92	935.84	2339.60	4679.20	46792.	8.50%	8.50%	8.50%
10/52 THRU 10/52	6/1/88	118.45	236.90	473.80	947.60	2369.00	4738.00	47380.	8.50%	8.50%	8.50%
11/52 THRU 11/52	7/1/88	118.45	236.90	473.80	947.60	2369.00	4738.00	47380.	8.50%	8.50%	8.50%
12/52 THRU 2/53	8/1/88	118.76	237.52	475.04	950.08	2375.20	4750.40	47504.	8.50%	8.50%	8.50%
3/53 THRU 3/53	5/1/88	115.01	230.02	460.04	920.08	2300.20	4600.40	46004.	8.50%	8.50%	7.50%
4/53 THRU 4/53	6/1/88	116.43	232.86	465.72	931.44	2328.60	4657.20	46572.	8.50%	8.50%	7.50%
5/53 THRU 5/53	7/1/88	116.43	232.86	465.72	931.44	2328.60	4657.20	46572.	8.50%	8.50%	7.50%
6/53 THRU 8/53	8/1/88	116.72	233.44	466.88	933.76	2334.40	4668.80	46688.	8.50%	8.50%	7.50%
9/53 THRU 9/53	5/1/88	113.03	226.06	452.12	904.24	2260.60	4521.20	45212.	8.50%	8.50%	7.59%
10/53 THRU 10/53	6/1/88	114.47	228.94	457.88	915.76	2289.40	4578.80	45788.	8.50%	8.50%	7.59%
11/53 THRU 11/53	7/1/88	114.47	228.94	457.88	915.76	2289.40	4578.80	45788.	8.50%	8.50%	7.59%
12/53 THRU 2/54	8/1/88	114.77	229.54	459.08	918.16	2295.40	4590.80	45908.	8.50%	8.50%	7.59%
3/54 THRU 3/54	5/1/88	111.17	222.34	444.68	889.36	2223.40	4446.80	44468.	8.50%	8.50%	7.68%
4/54 THRU 4/54	6/1/88	112.57	225.14	450.28	900.56	2251.40	4502.80	45028.	8.50%	8.50%	7.68%
5/54 THRU 5/54	7/1/88	112.57	225.14	450.28	900.56	2251.40	4502.80	45028.	8.50%	8.50%	7.68%
6/54 THRU 8/54	8/1/88	112.87	225.74	451.48	902.96	2257.40	4514.80	45148.	8.50%	8.50%	7.68%
9/54 THRU 9/54	5/1/88	109.32	218.64	437.28	874.56	2186.40	4372.80	43728.	8.50%	8.50%	7.77%
10/54 THRU 10/54	6/1/88	110.77	221.54	443.08	886.16	2215.40	4430.80	44308.	8.50%	8.50%	7.78%
11/54 THRU 11/54	7/1/88	110.77	221.54	443.08	886.16	2215.40	4430.80	44308.	8.50%	8.50%	7.78%
12/54 THRU 2/55	8/1/88	111.04	222.08	444.16	888.32	2220.80	4441.60	44416.	8.50%	8.50%	7.77%
3/55 THRU 3/55	5/1/88	107.52	215.04	430.08	860.16	2150.40	4300.80	43008.	8.50%	8.50%	7.87%
4/55 THRU 4/55	6/1/88	108.92	217.84	435.68	871.36	2178.40	4356.80	43568.	8.50%	8.50%	7.86%
5/55 THRU 5/55	7/1/88	108.92	217.84	435.68	871.36	2178.40	4356.80	43568.	8.50%	8.50%	7.86%
6/55 THRU 8/55	8/1/88	109.21	218.42	436.84	873.68	2184.20	4368.40	43684.	8.50%	8.50%	7.86%
9/55 THRU 9/55	5/1/88	105.78	211.56	423.12	846.24	2115.60	4231.20	42312.	8.50%	8.50%	7.95%
10/55 THRU 10/55	6/1/88	107.20	214.40	428.80	857.60	2144.00	4288.00	42880.	8.50%	8.50%	7.95%
11/55 THRU 11/55	7/1/88	107.20	214.40	428.80	857.60	2144.00	4288.00	42880.	8.50%	8.50%	7.95%
12/55 THRU 2/56	8/1/88	107.47	214.94	429.88	859.76	2149.40	4298.80	42988.	8.50%	8.50%	7.96%
3/56 THRU 3/56	5/1/88	104.09	208.18	416.36	832.72	2081.80	4163.60	41636.	8.50%	8.50%	8.05%
4/56 THRU 4/56	6/1/88	107.01	214.02	428.04	856.08	2140.20	4280.40	42804.	8.50%	8.50%	8.04%
5/56 THRU 5/56	7/1/88	107.01	214.02	428.04	856.08	2140.20	4280.40	42804.	8.50%	8.50%	8.04%
6/56 THRU 8/56	8/1/88	107.25	214.50	429.00	858.00	2145.00	4290.00	42900.	8.50%	8.50%	8.04%
9/56 THRU 9/56	5/1/88	103.86	207.72	415.44	830.88	2077.20	4154.40	41544.	8.50%	8.50%	8.14%
10/56 THRU 10/56	6/1/88	105.07	210.14	420.28	840.56	2101.40	4202.80	42028.	8.50%	8.50%	8.14%
11/56 THRU 11/56	7/1/88	105.07	210.14	420.28	840.56	2101.40	4202.80	42028.	8.50%	8.50%	8.14%
12/56 THRU 1/57	8/1/88	105.68	211.36	422.72	845.44	2113.60	4227.20	42272.	8.50%	8.50%	8.13%
2/57 THRU 5/57	7/1/88	107.12	214.24	428.48	856.96	2142.40	4284.80	42848.	8.50%	8.50%	8.04%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
6/57 THRU 6/57	5/1/88	104.20	208.40	416.80	833.60	2084.00	4168.00	41680.	8.50%	8.50%	8.14%
7/57 THRU 7/57	6/1/88	105.40	210.80	421.60	843.20	2108.00	4216.00	42160.	8.50%	8.50%	8.14%
8/57 THRU 11/57	7/1/88	105.40	210.80	421.60	843.20	2108.00	4216.00	42160.	8.50%	8.50%	8.14%
12/57 THRU 12/57	5/1/88	102.52	205.04	410.08	820.16	2050.40	4100.80	41008.	8.50%	8.50%	7.81%
1/58 THRU 1/58	6/1/88	103.74	207.48	414.96	829.92	2074.80	4149.60	41496.	8.50%	8.50%	7.81%
2/58 THRU 5/58	7/1/88	103.74	207.48	414.96	829.92	2074.80	4149.60	41496.	8.50%	8.50%	7.81%
6/58 THRU 6/58	5/1/88	100.89	201.78	403.56	807.12	2017.80	4035.60	40356.	8.50%	8.50%	8.04%
7/58 THRU 7/58	6/1/88	102.06	204.12	408.24	816.48	2041.20	4082.40	40824.	8.50%	8.50%	8.05%
8/58 THRU 11/58	7/1/88	102.06	204.12	408.24	816.48	2041.20	4082.40	40824.	8.50%	8.50%	8.05%
12/58 THRU 12/58	5/1/88	99.28	198.56	397.12	794.24	1985.60	3971.20	39712.	8.50%	8.50%	8.28%
1/59 THRU 1/59	6/1/88	100.47	200.94	401.88	803.76	2009.40	4018.80	40188.	8.50%	8.50%	8.27%
2/59 THRU 5/59	7/1/88	100.47	200.94	401.88	803.76	2009.40	4018.80	40188.	8.50%	8.50%	8.27%
6/59 THRU 7/59	9/1/88	100.18	200.36	400.72	801.44	2003.60	4007.20	40072.	8.50%	8.50%	7.81%
8/59 THRU 8/59	5/1/88	97.02	194.04	388.08	776.16	1940.40	3880.80	38808.	8.50%	8.50%	8.04%
9/59 THRU 9/59	6/1/88	98.11	196.22	392.44	784.88	1962.20	3924.40	39244.	8.50%	8.50%	8.04%
10/59 THRU 11/59	7/1/88	98.11	196.22	392.44	784.88	1962.20	3924.40	39244.	8.50%	8.50%	8.04%
12/59 THRU 1/60	9/1/88	98.32	196.64	393.28	786.56	1966.40	3932.80	39328.	8.50%	8.50%	8.05%
2/60 THRU 2/60	5/1/88	95.23	190.46	380.92	761.84	1904.60	3809.20	38092.	8.50%	8.50%	8.27%
3/60 THRU 3/60	6/1/88	96.33	192.66	385.32	770.64	1926.60	3853.20	38532.	8.50%	8.50%	8.27%
4/60 THRU 5/60	7/1/88	96.33	192.66	385.32	770.64	1926.60	3853.20	38532.	8.50%	8.50%	8.27%
6/60 THRU 7/60	9/1/88	96.48	192.96	385.92	771.84	1929.60	3859.20	38592.	8.50%	8.50%	8.27%
8/60 THRU 8/60	5/1/88	93.46	186.92	373.84	747.68	1869.20	3738.40	37384.	8.50%	8.50%	8.50%
9/60 THRU 9/60	6/1/88	94.54	189.08	378.16	756.32	1890.80	3781.60	37816.	8.50%	8.50%	8.50%
10/60 THRU 11/60	7/1/88	94.54	189.08	378.16	756.32	1890.80	3781.60	37816.	8.50%	8.50%	8.50%
12/60 THRU 1/61	9/1/88	94.72	189.44	378.88	757.76	1894.40	3788.80	37888.	8.50%	8.50%	8.50%
2/61 THRU 2/61	5/1/88	91.73	183.46	366.92	733.84	1834.60	3669.20	36692.	8.50%	8.50%	8.50%
3/61 THRU 3/61	6/1/88	92.78	185.56	371.12	742.24	1855.60	3711.20	37112.	8.50%	8.50%	8.50%
4/61 THRU 5/61	7/1/88	92.78	185.56	371.12	742.24	1855.60	3711.20	37112.	8.50%	8.50%	8.50%
6/61 THRU 7/61	9/1/88	93.06	186.12	372.24	744.48	1861.20	3722.40	37224.	8.50%	8.50%	8.50%
8/61 THRU 8/61	5/1/88	90.14	180.28	360.56	721.12	1802.80	3605.60	36056.	8.50%	8.50%	8.50%
9/61 THRU 9/61	6/1/88	91.14	182.28	364.56	729.12	1822.80	3645.60	36456.	8.50%	8.50%	8.50%
10/61 THRU 11/61	7/1/88	91.14	182.28	364.56	729.12	1822.80	3645.60	36456.	8.50%	8.50%	8.50%
12/61 THRU 1/62	9/1/88	91.40	182.80	365.60	731.20	1828.00	3656.00	36560.	8.50%	8.50%	8.50%
2/62 THRU 2/62	5/1/88	88.52	177.04	354.08	708.16	1770.40	3540.80	35408.	8.50%	8.50%	8.50%
3/62 THRU 3/62	6/1/88	89.15	178.30	356.60	713.20	1783.00	3566.00	35660.	8.50%	8.50%	8.50%
4/62 THRU 5/62	7/1/88	89.15	178.30	356.60	713.20	1783.00	3566.00	35660.	8.50%	8.50%	8.50%
6/62 THRU 7/62	9/1/88	89.39	178.78	357.56	715.12	1787.80	3575.60	35756.	8.50%	8.50%	8.50%
8/62 THRU 8/62	5/1/88	86.56	173.12	346.24	692.48	1731.20	3462.40	34624.	8.50%	8.50%	8.50%
9/62 THRU 9/62	6/1/88	87.17	174.34	348.68	697.36	1743.40	3486.80	34868.	8.50%	8.50%	8.50%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$75.00	$150.00	$375.00	$750.00	$7500.			
DENOMINATION	25.00	50.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)							ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
10/62 THRU 11/62	7/1/88	87.17	174.34	348.68	697.36	1743.40	3486.80	34868.	8.50%	8.50%	8.50%
12/62 THRU 1/63	9/1/88	87.54	175.08	350.16	700.32	1750.80	3501.60	35016.	8.50%	8.50%	8.50%
2/63 THRU 2/63	5/1/88	84.79	169.58	339.16	678.32	1695.80	3391.60	33916.	8.50%	8.50%	8.50%
3/63 THRU 3/63	6/1/88	85.18	170.36	340.72	681.44	1703.60	3407.20	34072.	8.50%	8.50%	8.50%
4/63 THRU 5/63	7/1/88	85.18	170.36	340.72	681.44	1703.60	3407.20	34072.	8.50%	8.50%	8.50%
6/63 THRU 7/63	9/1/88	85.83	171.66	343.32	686.64	1716.60	3433.20	34332.	8.50%	8.50%	8.50%
8/63 THRU 8/63	5/1/88	83.11	166.22	332.44	664.88	1662.20	3324.40	33244.	8.50%	8.50%	8.50%
9/63 THRU 9/63	6/1/88	83.52	167.04	334.08	668.16	1670.40	3340.80	33408.	8.50%	8.50%	8.50%
10/63 THRU 11/63	7/1/88	83.52	167.04	334.08	668.16	1670.40	3340.80	33408.	8.50%	8.50%	8.50%

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(3) MARKET BASED VARIABLE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
(4) GUARANTEED MINIMUM YIELD (ANNUAL PERCENTAGE RATE) FROM DATE OF ISSUE OR BEGINNING OF FIRST ACCRUAL PERIOD ON OR AFTER NOVEMBER 1, 1982, WHICHEVER IS LATER, TO THE ACCRUAL DATE SHOWN.
NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE / DENOMINATION	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
ISSUE DATES		$18.75 / 25.00	$37.50 / 50.00	$56.25 / 75.00	$ 75.00 / 100.00	$150.00 / 200.00	$375.00 / 500.00	$ 750.00 / 1000.00	$ 7500. / 10000.			
12/63 THRU 1/64	9/1/88	84.04	168.08	252.12	336.16	672.32	1680.80	3361.60	33616.	8.50%	8.50%	8.50%
2/64 THRU 2/64	5/1/88	81.39	162.78	244.17	325.56	651.12	1627.80	3255.60	32556.	8.50%	8.50%	8.50%
3/64 THRU 3/64	6/1/88	81.79	163.58	245.37	327.16	654.32	1635.80	3271.60	32716.	8.50%	8.50%	8.50%
4/64 THRU 5/64	7/1/88	81.79	163.58	245.37	327.16	654.32	1635.80	3271.60	32716.	8.50%	8.50%	8.50%
6/64 THRU 7/64	9/1/88	82.32	164.64	246.96	329.28	658.56	1646.40	3292.80	32928.	8.50%	8.50%	8.50%
8/64 THRU 8/64	5/1/88	79.73	159.46	239.19	318.92	637.84	1594.60	3189.20	31892.	8.50%	8.50%	8.50%
9/64 THRU 9/64	6/1/88	80.12	160.24	240.36	320.48	640.96	1602.40	3204.80	32048.	8.50%	8.50%	8.50%
10/64 THRU 11/64	7/1/88	80.12	160.24	240.36	320.48	640.96	1602.40	3204.80	32048.	8.50%	8.50%	8.50%
12/64 THRU 1/65	9/1/88	80.63	161.26	241.89	322.52	645.04	1612.60	3225.20	32252.	8.50%	8.50%	8.50%
2/65 THRU 2/65	5/1/88	78.08	156.16	234.24	312.32	624.64	1561.60	3123.20	31232.	8.50%	8.50%	7.50%
3/65 THRU 3/65	6/1/88	78.46	156.92	235.38	313.84	627.68	1569.20	3138.40	31384.	8.50%	8.50%	7.50%
4/65 THRU 5/65	7/1/88	78.46	156.92	235.38	313.84	627.68	1569.20	3138.40	31384.	8.50%	8.50%	7.50%
6/65 THRU 7/65	9/1/88	78.89	157.78	236.67	315.56	631.12	1577.80	3155.60	31556.	8.50%	8.50%	7.59%
8/65 THRU 8/65	5/1/88	76.41	152.82	229.23	305.64	611.28	1528.20	3056.40	30564.	8.50%	8.50%	7.59%
9/65 THRU 9/65	6/1/88	76.80	153.60	230.40	307.20	614.40	1536.00	3072.00	30720.	8.50%	8.50%	7.59%
10/65 THRU 11/65	7/1/88	76.80	153.60	230.40	307.20	614.40	1536.00	3072.00	30720.	8.50%	8.50%	7.50%
12/65 THRU 12/65	6/1/88	77.04	154.08	231.12	308.16	616.32	1540.80	3081.60	30816.	8.50%	8.50%	7.50%
1/66 THRU 4/66	7/1/88	77.04	154.08	231.12	308.16	616.32	1540.80	3081.60	30816.	8.50%	8.50%	7.59%
5/66 THRU 5/66	5/1/88	74.62	149.24	223.86	298.48	596.96	1492.40	2984.80	29848.	8.50%	8.50%	7.59%
6/66 THRU 6/66	6/1/88	75.38	150.76	226.14	301.52	603.04	1507.60	3015.20	30152.	8.50%	8.50%	7.59%
7/66 THRU 10/66	7/1/88	75.38	150.76	226.14	301.52	603.04	1507.60	3015.20	30152.	8.50%	8.50%	7.68%
11/66 THRU 11/66	5/1/88	73.01	146.02	219.03	292.04	584.08	1460.20	2920.40	29204.	8.50%	8.50%	7.68%
12/66 THRU 12/66	6/1/88	73.82	147.64	221.46	295.28	590.56	1476.40	2952.80	29528.	8.50%	8.50%	7.68%
1/67 THRU 4/67	7/1/88	73.82	147.64	221.46	295.28	590.56	1476.40	2952.80	29528.	8.50%	8.50%	7.78%
5/67 THRU 5/67	5/1/88	71.48	142.96	214.44	285.92	571.84	1429.60	2859.20	28592.	8.50%	8.50%	7.77%
6/67 THRU 6/67	6/1/88	72.28	144.56	216.84	289.12	578.24	1445.60	2891.20	28912.	8.50%	8.50%	7.77%
7/67 THRU 10/67	7/1/88	72.28	144.56	216.84	289.12	578.24	1445.60	2891.20	28912.	8.50%	8.50%	7.86%
11/67 THRU 11/67	5/1/88	70.02	140.04	210.06	280.08	560.16	1400.40	2800.80	28008.	8.50%	8.50%	7.86%
12/67 THRU 12/67	6/1/88	70.86	141.72	212.58	283.44	566.88	1417.20	2834.40	28344.	8.50%	8.50%	7.86%
1/68 THRU 4/68	7/1/88	70.86	141.72	212.58	283.44	566.88	1417.20	2834.40	28344.	8.50%	8.50%	7.96%
5/68 THRU 5/68	5/1/88	68.63	137.26	205.89	274.52	549.04	1372.60	2745.20	27452.	8.50%	8.50%	7.95%
6/68 THRU 6/68	6/1/88	69.45	138.90	208.35	277.80	555.60	1389.00	2778.00	27780.	8.50%	8.50%	7.95%
7/68 THRU 10/68	7/1/88	69.45	138.90	208.35	277.80	555.60	1389.00	2778.00	27780.	8.50%	8.50%	8.05%
11/68 THRU 11/68	5/1/88	67.26	134.52	201.78	269.04	538.08	1345.20	2690.40	26904.	8.50%	8.50%	8.04%
12/68 THRU 12/68	6/1/88	68.19	136.38	204.57	272.76	545.52	1363.80	2727.60	27276.	8.50%	8.50%	8.04%
1/69 THRU 4/69	7/1/88	68.19	136.38	204.57	272.76	545.52	1363.80	2727.60	27276.	8.50%	8.50%	8.14%
5/69 THRU 5/69	5/1/88	66.04	132.08	198.12	264.16	528.32	1320.80	2641.60	26416.	8.50%	8.50%	7.86%
6/69 THRU 6/69	10/1/88	68.76	137.52	206.28	275.04	550.08	1375.20	2750.40	27504.	8.50%	8.50%	7.96%
7/69 THRU 7/69	5/1/88	66.58	133.16	199.74	266.32	532.64	1331.60	2663.20	26632.			

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.			
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
8/69 THRU 8/69	6/1/88	66.75	133.50	200.25	267.00	534.00	1335.00	2670.00	26700.	8.50%	8.50%	7.95%
9/69 THRU 11/69	7/1/88	66.75	133.50	200.25	267.00	534.00	1335.00	2670.00	26700.	8.50%	8.50%	7.95%
12/69 THRU 12/69	10/1/88	67.10	134.20	201.30	268.40	536.80	1342.00	2684.00	26840.	8.50%	8.50%	7.95%
1/70 THRU 1/70	5/1/88	65.00	130.00	195.00	260.00	520.00	1300.00	2600.00	26000.	8.50%	8.50%	8.04%
2/70 THRU 2/70	6/1/88	65.14	130.28	195.42	260.56	521.12	1302.80	2605.60	26056.	8.50%	8.50%	8.04%
3/70 THRU 5/70	7/1/88	65.14	130.28	195.42	260.56	521.12	1302.80	2605.60	26056.	8.50%	8.50%	8.04%
6/70 THRU 6/70	10/1/88	65.44	130.88	196.32	261.76	523.52	1308.80	2617.60	26176.	8.50%	8.50%	8.05%
7/70 THRU 7/70	5/1/88	63.38	126.76	190.14	253.52	507.04	1267.60	2535.20	25352.	8.50%	8.50%	8.14%
8/70 THRU 8/70	6/1/88	63.56	127.12	190.68	254.24	508.48	1271.20	2542.40	25424.	8.50%	8.50%	8.13%
9/70 THRU 11/70	7/1/88	63.56	127.12	190.68	254.24	508.48	1271.20	2542.40	25424.	8.50%	8.50%	8.13%
12/70 THRU 12/70	10/1/88	63.68	127.36	191.04	254.72	509.44	1273.60	2547.20	25472.	8.50%	8.50%	8.14%
1/71 THRU 1/71	5/1/88	61.69	123.38	185.07	246.76	493.52	1233.80	2467.60	24676.	8.50%	8.50%	7.81%
2/71 THRU 2/71	6/1/88	61.84	123.68	185.52	247.36	494.72	1236.80	2473.60	24736.	8.50%	8.50%	7.81%
3/71 THRU 5/71	7/1/88	61.84	123.68	185.52	247.36	494.72	1236.80	2473.60	24736.	8.50%	8.50%	7.81%
6/71 THRU 6/71	10/1/88	62.01	124.02	186.03	248.04	496.08	1240.20	2480.40	24804.	8.50%	8.50%	7.81%
7/71 THRU 7/71	5/1/88	60.05	120.10	180.15	240.20	480.40	1201.00	2402.00	24020.	8.50%	8.50%	8.05%
8/71 THRU 8/71	6/1/88	60.19	120.38	180.57	240.76	481.52	1203.80	2407.60	24076.	8.50%	8.50%	8.04%
9/71 THRU 11/71	7/1/88	60.19	120.38	180.57	240.76	481.52	1203.80	2407.60	24076.	8.50%	8.50%	8.04%
12/71 THRU 12/71	10/1/88	60.33	120.66	180.99	241.32	482.64	1206.60	2413.20	24132.	8.50%	8.50%	8.04%
1/72 THRU 1/72	5/1/88	58.44	116.88	175.32	233.76	467.52	1168.80	2337.60	23376.	8.50%	8.50%	8.27%
2/72 THRU 2/72	6/1/88	58.58	117.16	175.74	234.32	468.64	1171.60	2343.20	23432.	8.50%	8.50%	8.27%
3/72 THRU 5/72	7/1/88	58.58	117.16	175.74	234.32	468.64	1171.60	2343.20	23432.	8.50%	8.50%	8.27%
6/72 THRU 6/72	10/1/88	58.74	117.48	176.22	234.96	469.92	1174.80	2349.60	23496.	8.50%	8.50%	8.27%
7/72 THRU 7/72	5/1/88	56.90	113.80	170.70	227.60	455.20	1138.00	2276.00	22760.	8.50%	8.50%	8.50%
8/72 THRU 8/72	6/1/88	57.03	114.06	171.09	228.12	456.24	1140.60	2281.20	22812.	8.50%	8.50%	8.50%
9/72 THRU 11/72	7/1/88	57.03	114.06	171.09	228.12	456.24	1140.60	2281.20	22812.	8.50%	8.50%	8.50%
12/72 THRU 12/72	10/1/88	57.14	114.28	171.42	228.56	457.12	1142.80	2285.60	22856.	8.50%	8.50%	8.50%
1/73 THRU 1/73	5/1/88	55.34	110.68	166.02	221.36	442.72	1106.80	2213.60	22136.	8.50%	8.50%	8.50%
2/73 THRU 2/73	6/1/88	55.49	110.98	166.47	221.96	443.92	1109.80	2219.60	22196.	8.50%	8.50%	8.50%
3/73 THRU 5/73	7/1/88	55.49	110.98	166.47	221.96	443.92	1109.80	2219.60	22196.	8.50%	8.50%	8.50%
6/73 THRU 6/73	10/1/88	55.60	111.20	166.80	222.40	444.80	1112.00	2224.00	22240.	8.50%	8.50%	8.50%
7/73 THRU 7/73	5/1/88	53.86	107.72	161.58	215.44	430.88	1077.20	2154.40	21544.	8.50%	8.50%	8.50%
8/73 THRU 8/73	6/1/88	53.99	107.98	161.97	215.96	431.92	1079.80	2159.60	21596.	8.50%	8.50%	8.50%
9/73 THRU 11/73	7/1/88	53.99	107.98	161.97	215.96	431.92	1079.80	2159.60	21596.	8.50%	8.50%	8.50%
12/73 THRU 12/73	6/1/88	53.10	106.20	159.30	212.40	424.80	1062.00	2124.00	21240.	8.51%	8.50%	8.51%
1/74 THRU 4/74	7/1/88	53.10	106.20	159.30	212.40	424.80	1062.00	2124.00	21240.	8.51%	8.50%	8.51%
5/74 THRU 5/74	5/1/88	51.42	102.84	154.26	205.68	411.36	1028.40	2056.80	20568.	8.50%	8.50%	8.50%
6/74 THRU 6/74	6/1/88	51.55	103.10	154.65	206.20	412.40	1031.00	2062.00	20620.	8.50%	8.50%	8.49%
7/74 THRU 10/74	7/1/88	51.55	103.10	154.65	206.20	412.40	1031.00	2062.00	20620.	8.50%	8.50%	8.49%

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U.S. SAVINGS BONDS, SERIES E - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$18.75	$37.50	$56.25	$ 75.00	$150.00	$375.00	$ 750.00	$ 7500.			
DENOMINATION	25.00	50.00	75.00	100.00	200.00	500.00	1000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
11/74 THRU 11/74	5/1/88	49.92	99.84	149.76	199.68	399.36	998.40	1996.80	19968.	8.50%	8.50%	8.50%
12/74 THRU 12/74	6/1/88	50.04	100.08	150.12	200.16	400.32	1000.80	2001.60	20016.	8.50%	8.50%	8.50%
1/75 THRU 4/75	7/1/88	50.04	100.08	150.12	200.16	400.32	1000.80	2001.60	20016.	8.50%	8.50%	8.50%
5/75 THRU 5/75	5/1/88	48.46	96.92	145.38	193.84	387.68	969.20	1938.40	19384.	8.50%	8.50%	8.50%
6/75 THRU 6/75	6/1/88	48.57	97.14	145.71	194.28	388.56	971.40	1942.80	19428.	8.50%	8.50%	8.50%
7/75 THRU 10/75	7/1/88	48.57	97.14	145.71	194.28	388.56	971.40	1942.80	19428.	8.50%	8.50%	8.49%
11/75 THRU 11/75	5/1/88	47.06	94.12	141.18	188.24	376.48	941.20	1882.40	18824.	8.50%	8.50%	8.50%
12/75 THRU 12/75	6/1/88	47.16	94.32	141.48	188.64	377.28	943.20	1886.40	18864.	8.50%	8.50%	8.50%
1/76 THRU 4/76	7/1/88	47.16	94.32	141.48	188.64	377.28	943.20	1886.40	18864.	8.50%	8.50%	8.50%
5/76 THRU 5/76	5/1/88	45.67	91.34	137.01	182.68	365.36	913.40	1826.80	18268.	8.50%	8.50%	8.50%
6/76 THRU 6/76	6/1/88	45.78	91.56	137.34	183.12	366.24	915.60	1831.20	18312.	8.51%	8.50%	8.51%
7/76 THRU 10/76	7/1/88	45.78	91.56	137.34	183.12	366.24	915.60	1831.20	18312.	8.51%	8.50%	8.51%
11/76 THRU 11/76	5/1/88	44.32	88.64	132.96	177.28	354.56	886.40	1772.80	17728.	8.50%	8.50%	8.50%
12/76 THRU 12/76	6/1/88	44.45	88.90	133.35	177.80	355.60	889.00	1778.00	17780.	8.50%	8.50%	8.50%
1/77 THRU 4/77	7/1/88	44.45	88.90	133.35	177.80	355.60	889.00	1778.00	17780.	8.50%	8.50%	8.50%
5/77 THRU 5/77	5/1/88	43.04	86.08	129.12	172.16	344.32	860.80	1721.60	17216.	8.50%	8.50%	8.50%
6/77 THRU 6/77	6/1/88	43.16	86.32	129.48	172.64	345.28	863.20	1726.40	17264.	8.50%	8.50%	8.50%
7/77 THRU 10/77	7/1/88	43.16	86.32	129.48	172.64	345.28	863.20	1726.40	17264.	8.50%	8.50%	8.50%
11/77 THRU 11/77	5/1/88	41.78	83.56	125.34	167.12	334.24	835.60	1671.20	16712.	8.50%	8.50%	7.50%
12/77 THRU 12/77	6/1/88	41.89	83.78	125.67	167.56	335.12	837.80	1675.60	16756.	8.50%	8.50%	7.50%
1/78 THRU 4/78	7/1/88	41.89	83.78	125.67	167.56	335.12	837.80	1675.60	16756.	8.50%	8.50%	7.50%
5/78 THRU 5/78	5/1/88	38.69	77.38	116.07	154.76	309.52	773.80	1547.60	15476.	8.50%	8.50%	8.48%
6/78 THRU 6/78	6/1/88	38.76	77.52	116.28	155.04	310.08	775.20	1550.40	15504.	8.53%	8.50%	8.53%
7/78 THRU 10/78	7/1/88	38.76	77.52	116.28	155.04	310.08	775.20	1550.40	15504.	8.53%	8.50%	8.53%
11/78 THRU 11/78	5/1/88	37.72	75.44	113.16	150.88	301.76	754.40	1508.80	15088.	8.58%	8.50%	8.58%
12/78 THRU 12/78	6/1/88	37.81	75.62	113.43	151.24	302.48	756.20	1512.40	15124.	8.63%	8.50%	8.63%
1/79 THRU 4/79	7/1/88	37.81	75.62	113.43	151.24	302.48	756.20	1512.40	15124.	8.63%	8.50%	8.63%
5/79 THRU 5/79	5/1/88	36.81	73.62	110.43	147.24	294.48	736.20	1472.40	14724.	8.67%	8.50%	8.67%
6/79 THRU 6/79	6/1/88	36.89	73.78	110.67	147.56	295.12	737.80	1475.60	14756.	8.71%	8.50%	8.71%
7/79 THRU 10/79	7/1/88	36.89	73.78	110.67	147.56	295.12	737.80	1475.60	14756.	8.71%	8.50%	8.71%
11/79 THRU 11/79	5/1/88	35.89	71.78	107.67	143.56	287.12	717.80	1435.60	14356.	8.71%	8.50%	8.71%
12/79 THRU 12/79	6/1/88	35.89	71.78	107.67	143.56	287.12	717.80	1435.60	14356.	8.71%	8.50%	8.71%
1/80 THRU 4/80	7/1/88	35.89	71.78	107.67	143.56	287.12	717.80	1435.60	14356.	8.71%	8.50%	8.71%
5/80 THRU 5/80	5/1/88	34.95	69.90	104.85	139.80	279.60	699.00	1398.00	13980.	8.70%	8.50%	8.70%
6/80 THRU 6/80	6/1/88	34.95	69.90	104.85	139.80	279.60	699.00	1398.00	13980.	8.70%	8.50%	8.70%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
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NOTE: ADDITIONAL INVESTMENT INFORMATION IS OBTAINABLE FROM FEDERAL RESERVE BANKS AND THE BUREAU OF THE PUBLIC DEBT, SAVINGS BOND OPERATIONS OFFICE, 200 THIRD ST., PARKERSBURG, WV 26102-1328.

U.S. SAVINGS BONDS, NOTES - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$20.25	$40.50	$60.75	$81.00
DENOMINATION	25.00	50.00	75.00	100.00

ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)				ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
5/67 THRU 5/67	5/1/88	78.53	157.06	235.59	314.12	8.50%	8.50%	8.50%
6/67 THRU 6/67	6/1/88	78.89	157.78	236.67	315.56	8.50%	8.50%	8.50%
7/67 THRU 10/67	7/1/88	78.89	157.78	236.67	315.56	8.50%	8.50%	8.50%
11/67 THRU 11/67	5/1/88	76.39	152.78	229.17	305.56	8.50%	8.50%	8.50%
12/67 THRU 12/67	6/1/88	76.77	153.54	230.31	307.08	8.50%	8.50%	8.50%
1/68 THRU 4/68	7/1/88	76.77	153.54	230.31	307.08	8.50%	8.50%	8.50%
5/68 THRU 5/68	5/1/88	74.35	148.70	223.05	297.40	8.50%	8.50%	7.50%
6/68 THRU 6/68	6/1/88	75.56	151.12	226.68	302.24	8.50%	8.50%	7.50%
7/68 THRU 10/68	7/1/88	75.56	151.12	226.68	302.24	8.50%	8.50%	7.50%
11/68 THRU 11/68	5/1/88	73.18	146.36	219.54	292.72	8.50%	8.50%	7.59%
12/68 THRU 12/68	6/1/88	73.58	147.16	220.74	294.32	8.50%	8.50%	7.59%
1/69 THRU 4/69	7/1/88	73.58	147.16	220.74	294.32	8.50%	8.50%	7.59%
5/69 THRU 5/69	5/1/88	71.26	142.52	213.78	285.04	8.50%	8.50%	7.68%
6/69 THRU 6/69	6/1/88	71.59	143.18	214.77	286.36	8.50%	8.50%	7.69%
7/69 THRU 10/69	7/1/88	71.59	143.18	214.77	286.36	8.50%	8.50%	7.69%
11/69 THRU 11/69	5/1/88	69.36	138.72	208.08	277.44	8.50%	8.50%	7.77%
12/69 THRU 12/69	6/1/88	69.68	139.36	209.04	278.72	8.50%	8.50%	7.77%
1/70 THRU 4/70	7/1/88	69.68	139.36	209.04	278.72	8.50%	8.50%	7.77%
5/70 THRU 5/70	5/1/88	67.49	134.98	202.47	269.96	8.50%	8.50%	7.86%
6/70 THRU 6/70	6/1/88	67.79	135.58	203.37	271.16	8.50%	8.50%	7.87%
7/70 THRU 10/70	7/1/88	67.79	135.58	203.37	271.16	8.50%	8.50%	7.87%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
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U.S. SAVINGS BONDS, SERIES EE - REDEMPTION VALUES AND INVESTMENT YIELDS FOR ACCRUAL DATES OCCURRING MAY 1, 1988 THRU OCT 1, 1988

ISSUE PRICE	$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2500.00	$5000.			
DENOMINATION	50.00	75.00	100.00	200.00	500.00	1000.00	5000.00	10000.			
ISSUE DATES	ACCRUAL DATE(1)	REDEMPTION VALUES DURING HALF-YEAR PERIOD FOLLOWING ACCRUAL DATE (VALUES INCREASE ON FIRST DAY OF PERIOD)								ACTUAL YIELD(2)	MARKET YIELD(3)	MINIMUM YIELD(4)
1/80 THRU 4/80	7/1/88	51.54	77.31	103.08	206.16	515.40	1030.80	5154.00	10308.	9.82%	8.50%	9.82%
5/80 THRU 10/80	5/1/88	49.82	74.73	99.64	199.28	498.20	996.40	4982.00	9964.	9.80%	8.50%	9.80%
11/80 THRU 4/81	5/1/88	47.62	71.43	95.24	190.48	476.20	952.40	4762.00	9524.	9.51%	8.50%	9.51%
5/81 THRU 10/81	5/1/88	45.86	68.79	91.72	183.44	458.60	917.20	4586.00	9172.	9.57%	8.50%	9.57%
11/81 THRU 4/82	5/1/88	43.70	65.55	87.40	174.80	437.00	874.00	4370.00	8740.	9.29%	8.50%	9.29%
5/82 THRU 10/82	5/1/88	41.66	62.49	83.32	166.64	416.60	833.20	4166.00	8332.	9.13%	8.50%	9.13%
11/82 THRU 4/83	5/1/88	39.52	59.28	79.04	158.08	395.20	790.40	3952.00	7904.	8.50%	8.50%	7.51%
5/83 THRU 10/83	5/1/88	37.46	56.19	74.92	149.84	374.60	749.20	3746.00	7492.	8.25%	8.25%	7.51%

(1) ACCRUAL DATE SHOWN IS FOR BONDS OF THE FIRST ISSUE DATE LISTED -- ADD ONE MONTH FOR EACH SUCCESSIVE MONTH OF ISSUE.
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[FR Doc. 88-6445 Filed 3-23-88; 8:45 am]
BILLING CODE 4810-40-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD5-88-004]

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of CONRAIL, the Coast Guard is changing the regulations governing the operation of the vertical lift railroad bridge across the Anacostia River, at mile 3.4, in Washington, DC. The change is being made in order to eliminate the need to have a person constantly available to open the draw during times of the year when few vessels transit the river. This action provides for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: On December 29, 1987, the Coast Guard published a notice of proposed rulemaking (52 FR 49031) regarding this bridge. The Commander, Fifth Coast Guard District, also published the proposal in a Public Notice, dated July 16, 1987. In the Federal Register notice, interested persons were given until February 12, 1988, to submit comments. Interested persons were given until August 17, 1987, to submit comments in the Public Notice.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Comments

In December 1986, CONRAIL requested that the regulations for the railroad bridge be amended to restrict the openings of the bridge at all times between October 1 through March 31 and between 11:00 p.m. and 7:00 p.m. between April 1 through September 30. During these timeframes the bridge would only open if eight hours advance notice was given.

The requested change increases the hours on weekdays during the boating season when the bridge is required to open on signal.

No comments were received as a result of the notice of proposed rulemaking nor the public notice. The proposal is being adopted with minor editorial changes. The current provision in 33 CFR 117.253(b)(5) relating to clearance gages that was erroneously left out of the notice of proposed rulemaking have been retained in the final rule as paragraph (b)(2).

Economic Assessment and certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Because of the infrequent bridge openings during the winter months and the evening hours of the boating season, the economic impact should be minimal. The Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.253(b) is revised to read as follows:

§ 117.253 Anacostia River.

* * * * *

(b) CONRAIL bridge, mile 3.4.

(1) The draw of the shall open on signal:

(i) At all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property.

(ii) On Saturdays, Sundays, and Federal Holidays from April 1 through September 30.

(iii) On weekdays, which are not Federal Holidays, between 7:00 a.m. and 11:00 p.m., from April 1 through September 30.

(iv) At all other times, if at least eight hours notice is given.

(2) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of tide. The gages shall be placed on the bridge so that they are plainly visible to the operator of any vessel approaching the bridge from either upstream or downstream.

Dated: March 14, 1988.

A.D. Breed,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 88-6467 Filed 3-24-88; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Eligibility for Medical Benefits; Evidence of Inability To Defray Necessary Medical Expenses

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

SUMMARY: On pages 25061-25068 Federal Register of July 10, 1986 (51 FR 25061), the Veterans Administration (VA) published a final rule amending its medical series to conform with changes to several sections of Title 38, United States Code, enacted with passage of Title XIX of Pub. L. 99-272, "The Veterans' Health Care Amendments of 1986," significantly affecting veterans eligibility for health care benefits. In the process of amending § 17.47 introductory text language was inadvertently left in paragraph (e). This notice corrects that error; the proper language for § 17.47(e) is set forth below.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Stuart E. Mount, Acting Chief, Policies and Procedures Division (136F), Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20402, (202) 233-2143.

SUPPLEMENTARY INFORMATION:

List of Subjects in 38 CFR Part 17

Health care, Health care facilities, nursing homes, Veterans.

38 CFR Part 17 is amended as follows:

PART 17—[AMENDED]

1. The authority citation for § 17.47(e) continues to read as follows:

Authority: 38 U.S.C. 610(b), 621.

§ 17.47 [Amended]

2. In § 17.47, paragraph (e) is amended by removing the introductory text.

Dated: March 17, 1988.

Priscilla Carey,

Chief, Directives Management Division.

[FR Doc. 88-6280 Filed 3-23-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6667

[OR-943-07-4220-10-GP-07-293; OR-36236]

Withdrawal of Public Land for John Day Administrative Site; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 5 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the John Day Administrative Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management administrative site:

Willamette Meridian

T. 16 S., R. 27 E.,
Sec. 29, S½SE¼SW¼NW¼.

The area described contains 5 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f), of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: March 10, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-6415 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6668

[ID-943-08-4220-10; I-22814]

Withdrawal of Public Land for the Dworshak Dam and Reservoir Project, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 764.61 acres of public land from surface entry and mining for a period of 84 years for the U.S. Army Corps of Engineers and transfers jurisdiction of the land to the Corps to protect big game habitat that was lost by filling the Dworshak Dam and Reservoir. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws:

Boise Meridian

T. 41 N., R. 5 E.,
Sec. 19, NW¼SE¼NE¼;
Sec. 25, lots 3, 4, S½SW¼NW¼;
Sec. 26, lot 2 except NW¼, lot 9, SE¼SE¼NE¼, NW¼NE¼SW¼, S½NE¼SW¼;
Sec. 27, S½N½SW¼;
Sec. 28, S½SE¼SW¼;
Sec. 31, S½SE¼SE¼;
Sec. 32, lots 2, 3, E½NE¼NE¼, SE¼SW¼NE¼, SE¼NE¼, S½NE¼SW¼, SW¼SW¼, NW¼SE¼;
Sec. 33, lots 6 and 7;
Sec. 34, N½N½NE¼, NE¼SW¼NW¼, W½SW¼NW¼, NW¼SE¼NW¼;
Sec. 35, N½NW¼NE¼, SW¼NW¼NE¼, N½N½NW¼, SE¼NE¼NW¼.

The areas described aggregate 764.61 acres in Clearwater County.

2. Jurisdiction of the lands described in this order is hereby transferred to the U.S. Army Corps of Engineers.

3. This withdrawal will expire 84 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: March 15, 1988.

J. Steven Griles,

Assistant Secretary of the Intrerior.

[FR Doc. 88-6402 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

43 CFR Public Land Order 6669

[MT-930-08-4220-10; M-21943]

Withdrawal of National Forest Land for Lincoln Gulch Historic Site; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 90 acres of national forest land from mining for 20 years to protect the Lincoln Gulch Historical Site. The lands have been and remain open to appropriate forms of surface entry and to mineral leasing.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6090.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2151; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2) to protect the Lincoln Gulch Historical Site.

Principal Meridian

T. 14 N., R. 9 W.,
Sec. 8, W½SE¼NW¼, W½NE¼SW¼, SE¼SW¼, and SW¼SW¼SE¼.

The area described contains 90 acres in Lewis and Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal

Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

March 15, 1988.

[FR Doc. 88-6414 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-DN-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85-19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Final rule; extension of effective date.

SUMMARY: In response to requests from affected conferences, the Federal Maritime Commission has determined to extend the effective date of the final rule in Docket No. 85-19.

DATE: Effective June 26, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission served a final rule in this proceeding on February 18, 1988, with an effective date 30 days after publication in the **Federal Register**. The notice appeared on February 26, 1988 (53 FR 5770) with an effective date of March 28, 1988.

Various conferences have filed requests for a 90-day stay of the effective date. The conferences stress the magnitude of complying with the new filing requirements imposed by the rule and indicate that the current 30-day period is insufficient to achieve compliance.

Upon consideration of the requests, the Commission has determined to grant a 90-day extension of the effective date of the final rule in Docket No. 85-19. The date the rule will become effective is established as June 26, 1988. By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-6439 Filed 3-23-88; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[APD 2800.12 CHGE 53]

General Services Administration Acquisition Regulation; Buy American Act Construction Materials

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSAR) Chapter 5, is amended by adding section 525.202 to provide specific policy concerning the use and approval of foreign construction materials; to add section 525.203 to provide a method to evaluate offers when foreign construction materials are proposed; to add section 525.204 to provide for the documentation of the contractor's failure to comply with the Buy American Act; to add section 525.205 to prescribe a provision entitled "Buy American Act Notice—Construction Materials;" and by adding section 552.225-75 to provide the text of the provision entitled "Buy American Act Notice—Construction Materials." The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations on (202) 523-4916.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration published GSAR Notice 5-131 in the **Federal Register** (52 FR 42125) on November 3, 1987, inviting comments from interested parties. No comments were received from the public. Comments received from various offices within GSA have been reviewed, reconciled, and incorporated when appropriate, in this final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. A final regulatory flexibility analysis has been prepared, in accordance with the Regulatory Flexibility Act (5 U.S.C. 604), and provided to the Chief Counsel for Advocacy, Small Business Administration. Copies of the final regulatory flexibility analysis may be obtained by contacting Marjorie Ashby on (202) 523-3822 or writing the Office of GSA Acquisition Policy and Regulations (VP), 18th & F Streets NW., Washington, DC 20405. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act and assigned OMB Control Number 3090-0240.

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 525 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 525—FOREIGN ACQUISITION

2. The table of contents for Part 525 is amended by adding Subpart 525.2 and related sections to read as follows:

Subpart 525.2—Buy American Act—Construction Materials

Sec.

3. Subpart 525.2 is added to read as follows:

Subpart 525.2—Buy American Act—Construction Materials

525.202 Policy.

The HCA is authorized to make determinations required by FAR 25.202(a). The HCA may not redelegate authority to make determinations under FAR 25.202(a)(3) when the cost of the materials is estimated to exceed $100,000. Authority to make other determinations may be redelegated.

525.203 Evaluation of offers.

(a) The HCA or a designee may authorize the use of a particular foreign construction material when the use of a comparable domestic construction material would unreasonably increase the cost of the contract. The cost of a particular domestic construction material shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. The cost of construction material includes all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

(b) The evaluation process described in paragraph (a) above, does not apply to excepted materials listed in FAR 25.108 or in the solicitation. (See paragraph (a) of the provision at

552.225–75). See FAR 25.201 for computing cost of components.

(c) The provision at 552.225–75, Buy American Act Notice—Construction Materials, requires offerors proposing to use foreign construction materials provide adequate information for Government evaluation under paragraph (a) above, and permits alternate offers for comparable domestic construction materials at stated prices. When a foreign construction material is not authorized under (a) above, evaluation of the offer must be based on the stated price, if any, for comparable domestic construction material. If an offer proposing to use foreign construction material does not furnish data on the cost of comparable domestic construction material, and use of the foreign construction material is not authorized, the offer of foreign material must be rejected, unless the contracting officer is able to obtain prices on comparable domestic material which verifies that domestic prices are unreasonable.

(d) The contracting officer shall add 6 percent of the cost of all foreign construction materials authorized for use in accordance with paragraph (a) above, to price(s) offered, if applicable, for evaluation purposes only.

525.204 Violations.

If a contractor fails to comply with the clause at FAR 52.225–5, Buy American Act—Construction Materials, the contracting officer shall document the failure in a report and forward the report to the debarring official for consideration for debarment action in accordance with Subpart 509.4.

525.205 Solicitation provision.

The contracting officer shall insert the provision at 552.225–75, Buy American Act Notice—Construction Materials, in solicitations for construction inside the United States. This provision supplements the Buy American Act—Construction Materials clause at FAR 52.225–5.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The Table of Contents for Part 552 is amended by adding section 552.225–75 to read as follows:

Subpart 552.2—Text of Provisions and Clauses

Sec.
552.225–75 Buy American Act Notice—Construction Materials.

5. Section 552.225–75 is added to read as follows:

552.225–75 Buy American Act Notice—Construction Materials.

As prescribed in 525.205, insert the following provision in solicitations and contracts:

Buy American Act Notice—Construction Materials (Mar 1988)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (See the clause entitled "Buy American Act—Construction Materials"). This requirement does not apply to the excepted construction material or components listed either below or in FAR 25.108:

(List applicable excepted materials not listed in FAR 25.108 or indicate "none.")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available quantities, of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost of this contract.

(c) Any offer based on the use of one or more other foreign construction materials shall include current data, based on a reasonable canvass of suppliers, in the format listed in paragraph (h) below, clearly demonstrating that the cost of each foreign construction material, plus 6 percent, is less than the cost of each comparable domestic construction material. The cost of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government will add to the offer, 6 percent of the cost of foreign construction material that qualifies for acceptance under paragraph (c) above.

(e) When offering foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a foreign construction material to be acceptable, under (c) above, will cause rejection of the entire offer.

(f) If any foreign construction material does not qualify for acceptance under paragraph (c) above, the Government will evaluate the offer on the basis of the stated price for comparable domestic construction material, and the Offeror shall be required to furnish such domestic construction material at that price. Therefore, if the Offeror does not state a price for a comparable domestic construction material, and the foreign construction material does not qualify for acceptance under paragraph (c) above, the offer will be rejected in sealed bid procurements and may be rejected in negotiated procurements.

(g) If the foregoing procedure results in a tie between a foreign offer as evaluated and a domestic offer, award shall be made on the domestic offer. In such case, offers proposing to use any foreign construction material will be considered to be foreign offers.

(h) For evaluation purposes under paragraph (c) above, the following information and any applicable supporting data based on the canvass of suppliers shall be included in the offer for the use of one or more foreign construction materials:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON

Construction material description	Unit of measure	Quantity	Cost (dollars) [1]
Item 1:			
Foreign construction material			
Comparable domestic construction material			$
Item 2:			
Foreign construction material			$
Comparable domestic construction material			$

[1] Include all delivery costs to the construction site and any applicable duty.

(End of Provision)

Dated: March 11, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–6388 Filed 3–23–88; 8:45 am]

BILLING CODE 6820–61–M

VETERANS ADMINISTRATION

48 CFR Part 836

Acquisition Regulations; Specifications

AGENCY: Veterans Administration.

ACTION: Correction; final rule.

SUMMARY: On page 7755 of the **Federal Register** of March 10, 1988 (53 FR 7755), the Veterans Administration (VA) published a final rule amending the VA Acquisition Regulations (VAAR) to provide Agency guidance on the use of specifications, standards, and other purchase descriptions in the acquisition process. In section 836.202(b) a series of words was inadvertently omitted. This notice corrects that error by setting forth the language below.

FOR FURTHER INFORMATION CONTACT: Marsha J. Grogan, Acquisition Policy (93), Office of Acquisition and Materiel Management, Veterans Administration,

810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3784.

Dated: March 17, 1988.

Priscilla Carey,

Chief, Directives Management Division.

Section 836.202 is amended by correctly revising paragraph (b) to read as follows:

836.202 Specifications.

* * * * *

(b) The use of "brand name or equal" or other restrictive specifications by contract architect-engineers is specifically prohibited without the prior written approval of the contracting officer during the design stage. The contracting officer shall inform the prospective architect-engineers of this requirement during the negotiation phase, prior to award of contract for design.

* * * * *

[FR Doc. 88-6279 Filed 3-23-88; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat Taken in 1987 and Subsequent Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed in Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This document announces final findings by the Scientific Authority and the Management Authority of the United States on the export of bobcats harvested in Kentucky and on the Fort Apache Indian Reservation by the White Mountain Apache Tribe. This document also stipulates that monitoring procedures previously established for other States and Indian Nations be extended to include Kentucky and the White Mountain Apache Tribe. The Service intends these findings to span a period not limited to a single harvest season.

In the January 5, 1984, **Federal Register** (49 FR 590), the Service published a rule granting export approval for bobcats (*Lynx rufus*) and certain other Convention-listed species from specified States and Indian Nations for the 1983-84 and subsequent harvest seasons. This document adds the State of Kentucky and the White Mountain Indian Tribe to the list of States and Indian Nations for which the export of bobcats is approved.

DATES: This rule is effective March 24, 1988.

ADDRESSES: Please send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Matomic Building, Room 527; U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspections from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 537, 1717 H Street NW., Washington, DC or at the Office of Management Authority, U.S. Fish and Wildlife Service Room 400, 1375 K Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653-5948

Export Permits—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4955

State Export Programs—Mr. S. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 343-4963

SUPPLEMENTARY INFORMATION:

Background

The Convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

In the January 5, 1984, and the August 18, 1983 (48 FR 37494) **Federal Register** documents, the Service announced the decision from a review of listed species concluded at the Fourth Meeting of the Conference of the Parties in Botswana that each of the species or geographically separate populations addressed in those export findings, including the bobcat, should be regarded as listed in Appendix II because of its similarity in appearance to other listed species or populations. As indicated in those documents, the Conference of the Parties adopted a resolution accepting the report of the Central Committee on the 10-year review of species listed in Appendices I and II. The report included recommendations that these populations or species should be considered as listed in Appendix II only because of similarity in appearance, if they were to be retained in that appendix.

The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor the status of these species and their trade on an annual basis so that it could detect any significant downward trends in populations and, where necessary, institute more restrictive export controls in response to them. The document also described how the Service, as Management Authority, would determine if specimens had been lawfully acquired on the basis of tagging requirements.

This is the second **Federal Register** document concerning the Service's findings on export of bobcats taken in Kentucky and on the Fort Apache Indian Reservation in 1987 and subsequent seasons. The first document (52 FR 45469; November 30, 1987) announced the Service's intention to develop findings on export of 1987 and subsequent seasons' harvest of bobcats taken in Kentucky and on the Fort Apache Indian Reservation by the White Mountain Apache Tribe.

The purpose of this rule is to add Kentucky and the White Mountain Apache Tribe to those States and Indian Tribes and Nations from which the Service has approved the export of bobcats in the 1983-84 and subsequent seasons. This list was identified in the January 5, 1984, **Federal Register** (49 FR 590) and is listed in 50 CFR 23.52.

Comments and Information Received

The Service received comments on the proposed findings and rule from the Defenders of Wildlife and from the Wildlife Legislative Fund of America.

The Wildlife Legislative Fund supported a decision to approve export of bobcats harvested in the 1987 and subsequent seasons in Kentucky and the Fort Apache Indian Reservation. The Defenders of Wildlife, while not commenting specifically on bobcat status and harvest programs in Kentucky or the Fort Apache Indian Reservation, recommended to the Service "that it: (1) Make the 'no detriment' finding required by CITES prior to authorizing export of bobcats; and (2) describe specifically how it 'monitors' that status of the bobcat and bobcat exports."

The issue that the Defenders of Wildlife appears to raise is that the language of the Convention does not specifically provide different criteria to be used in determining no detriment for those species listed in Appendix II under the rationale of Article II paragraph 2(a), as opposed to those listed in Appendix II under Article II paragraph 2(b) because of their similarity of appearance to those listed based on paragraph 2(a).

In the August 18, 1983, **Federal Register** document (48 FR 37494), the Service indicated that when a species is listed only to enable trade in other species to be effectively controlled, the Scientific Authority should focus on this control aspect when advising on nondetriment. The marking of pelts with tags bearing the name of the species and the issuance of export permits naming the species being traded should suffice to address problems of identification due to similarity of appearance between any of these furbearers and the other species they were listed to protect. The States and the Service have continued to implement improvements in this marking system.

Although the Service did not adopt the view that the export standard for species listed in Appendix II under Article II paragraph 2(b) should be the same as if listed under paragraph 2(a), the Service in the January 4, 1984, **Federal Register** document did provide information that helped to illustrate that export under State programs at the time was not detrimental to the survival of the species involved. The Service also established a procedure for monitoring and review to establish if the determination that the bobcat is properly listed under Article II paragraph 2(b) remains correct.

Furthermore, as part of this monitoring program, the States that have been approved for export of bobcats have annually certified that the harvest of bobcats will not be detrimental to survival of the species and have provided information and/or the basis for support of this assessment. In addition to the Service's annual request for the above certification from each State, the Service indicated that it would continue to monitor export trade and would conduct more comprehensive reviews of accumulated information whenever available information from the States or other sources indicates a possible problem. The review procedure includes a provision for limiting trade where necessary to avoid detriment to the species involved.

The Service has recorded the annual export of bobcat specimens and has recorded the number of bobcat pelt tags issued by State programs. However, inasmuch as these parameters do not indicate the total harvest, the Scientific Authority has considered the information from the States to be the most meaningful for determining whether the species remains correctly listed. These States have professionally-run management and research programs for the bobcat and information from these programs serves to indicate whether similarity in appearance treatment remains suitable.

Management Authority Determinations

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of wildlife or plants. The Service, therefore, must be satisfied that the pelts, hides, or products of the furbearer in question were not obtained in violation of State or Federal law, in order to allow export. A system to determine whether specimens have been lawfully acquired on the basis of tagging requirements was stipulated in the January 5, 1984, **Federal Register** (49 FR 590). The Service has continued to monitor the implementation of these regulations, and considers that these programs provide reasonable assurance that bobcat specimens being exported were not obtained in violation of laws established for their protection.

Scientific Authority Advice

The State of Kentucky provided current information on population density based on home range studies conducted in those portions of the State in which the taking of bobcats will be permitted, an evaluation of available habitat with regard to distribution of the bobcat, and possible trends in habitat conditions. The State also informed the Service that they had contracted for the analysis of age structure, sex ratio, placental scar counts, food habits, body size and condition measurements and that this information would be incorporated into the bobcat simulation model being developed.

The White Mountain Indian Tribe provided information on bobcat populations based on density in the various habitat types and harvest. The tribe reported a total harvest of only 34 bobcats in the 1986–87 season. Nevertheless, it is important to address the White Mountain Indian Tribe separately in order to document all entities involved in tagging programs. The area of the Fort Apache Indian Reservation is relatively small, and information on the status of bobcats throughout Arizona provides a more comprehensive assessment of harvest effects on State-wide survival of the species. The State of Arizona prior to the 1987–88 trapping season stipulated that "there is no reason to believe that the 1987–88 bobcat harvest will be detrimental to the survival of the bobcat in Arizona," and provided information on bobcat harvest (both from trapping and hunting), population age structure data, number of trappers, and trapping success.

The Service continues to believe that the bobcat is properly listed for reasons of similarity of appearance, and that with the tagging of pelts as described in Management Authority Determinations (49 FR 590), the export of those animals will not reduce the effectiveness of the Convention in controlling trade in other listed species. The State of Kentucky and the White Mountain Apache Tribe have established programs to properly mark the specimens so the export will not be detrimental to the species that the bobcat is listed to protect, and to provide information to indicate whether harvest will not threaten the survival of the species.

Export Approval

The Service approves exports of bobcats harvested in the 1987 and subsequent seasons in Kentucky and on the Fort Apache Indian Reservation by the White Mountain Apache Tribe on the basis that both the Scientific Authority and the Management Authority criteria have been satisfied.

This approval is subject to revision prior to any subsequent taking season in any particular State or Indian Nation if a review of information reveals that Management Authority or Scientific Authority findings in favor of export

must be changed. The Service does not grant general approval for export of specimens of this species originating in any State or Indian Nation not named for one or more of the following reasons: (1) The species does not occur there, (2) no harvest of the species is allowed by the State or Indian Nation, or (3) the Service does not have current information needed for Scientific Authority and Management Authority findings.

The Department has determined, within the meaning of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act, to make these findings and rule effective immediately. By making this rule effective immediately, a restriction on international trade will be lifted from individual trappers and fur dealers within Kentucky and the Indian Reservation. Furthermore, this document represents the final administrative step in authorizing the export of bobcats from the approved State and Indian Nations in accordance with the Convention. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that already has begun in the State and Indian Reservation. It could also adversely affect the species by reducing compliance with State tagging requirements. Furthermore, good cause exists for making these findings effective as soon as possible to avoid economic injury to individual trappers, dealers, or other small entities that are directly affected by the findings. It should be noted that making this finding and rule effective immediately wll not adversely affect the species involved, in view of the findings on nondetriment contained herein.

Note.—The Department has determined that final findings on the export of certain Appendix II animals taken in the 1983–84 and subsequent harvest seasons are not a major Federal action that would significantly effect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and therefore, the preparation of an Environmental Impact Statement is not required (48 FR 37494). The Department also has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The findings will allow export of specimens taken in accordance with other State budget programs that have operated for several years without adversely affecting the resource. The findings do not contain any information collection or recordkeeping requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Mr. S. Ronald Singer, Office of Management Authority, and Dr. Charles W. Dane, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set out in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, and Endangered Species Act of 1973, 87 Stat 884, 16 U.S.C. 1531 *et seq.*

2. Amend § 23.52 by revising paragraph (h) to read as follows:

§ 23.52 Bobcat (Lynx rufus).

* * * * * *

(h)(1) *1983–84 and subsequent harvests (in addition to those listed above):* Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Kansas, Klamath Tribe, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Navajo Nation, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Penobscot Nation, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

(2) *1987 and subsequent harvests (in addition to those listed above):* Kentucky, White Mountain Apache Tribe.

Condition on export: Each pelt must be clearly identified as to species, State or Indian Nation of origin and season of taking by a permanently attached, serially numbered tag of a type approved by and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may be exported from the United States when accompanied by the State or Indian Nation export tags removed in a manner described by the Service from pelts contained in the products; such tags must be removed by cutting the tag strap on the female side next to the locking socket of the tag so that the locking socket and locking tip remain joined, and such tags must be surrendered to the Service prior to export.

Date: February 25, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–6371 Filed 3–23–88; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in the State of California; Amendment to the Direct Sales Exemption Regulations for Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change in the direct home use sales exemption regulations established under the pear, plum, and peach marketing order. The change would bring the quantity of pears that can be handled free of certain program requirements under that exemption more in line with the quantity that would normally be used for home use.

DATE: Comments must be received by April 25, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone 202–475–5464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 45 handlers of pears subject to regulations under the marketing order, and approximately 2,800 pear, plum, and peach producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers may be classified as small entities.

Section 917.143 of the regulations for pears, plums, and peaches specifies conditions which must be followed to handle pears, plums, and peaches exempt from certain requirements, including grade, size, inspection, container, marking, and assessment regulations. Among other things, maximum weight limitations are specified. For pears, plums, and peaches, the quantity shipped cannot exceed 200 pounds to any one person during any one day. These purchases also must be for home use and cannot be resold.

Under these exemption requirements, a handler could sell a family of four 800 pounds of pears in any one day. The Pear Commodity Committee asserts that that amount of pears is excessive for home use sales in view of the intent of these exemption provisions. The intent is to help small growers by permitting them to sell such fruit directly to the consumers at the premises where the fruit is grown, at a nearby packing house, retail stand, or at certified farmers' markets.

Under the committee's recommendation, the poundage limitation would be determined on a per vehicle basis rather than on a per person basis. Hence, a family of four using the family car could purchase only 200 pounds of pears in a day, rather than 800 pounds each under the current exemption requirements.

For perspective concerning the adequacy of the recommended poundage limitation, it should be noted that the annual per capita consumption in 1985 of fresh pears was 2.84 pounds. Hence, according to the committee, the recommendation would still provide more than enough fruit to meet the home use needs of local consumers and would not have an adverse impact on those growers who find handling fruit for home use under this exemption attractive. The proposed change to a poundage limitation of 200 pounds based on one vehicle per day is consistent with the intent of the minimum quantity exemption authority.

Therefore, the Department's view is that the proposed quantity limitation for pears is more than adequate for home usage, it would not lessen the use of the roadside sales exemption by local consumers and growers, and that the proposal would have little, if any, impact on industry operations. Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A similar proposal concerning such sales of nectarines under Marketing Order No. 916 (7 CFR Part 916), and plums and peaches under Marketing Order No. 917 (7 CFR Part 917) was published in the **Federal Register** on February 26, 1988 (53 FR 5776), with a comment period ending March 28. This proposed rule would amend § 917.143(b)(3) and reflects the proposed changes in the February 26, 1988 **Federal Register** publication. It is anticipated that any changes, if adopted, would be in place when the 1988 shipping season for each of these commodities begins. Shipments of peaches are expected to start in mid-April. Shipments of nectarines are expected to start in late April and shipments of plums in early

May. Pear shipments are not expected to start until late June.

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is proposed to be amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.143 is amended by revising paragraph (b)(3) to read as follows:

§ 917.143 Exemption.

* * * * *

(b) * * *

(3) The shipment does not exceed 200 pounds of pears, 200 pounds of plums, and 200 pounds of peaches to any one vehicle during any one day.

* * * * *

Dated: March 21, 1988.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88–6423 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1007

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: The proposed suspension would make inoperative for the months of March through August 1988 the order's base and excess plan for paying producers for their milk. Southern Milk Sales, Inc., has requested the suspension action due to a substantial increase in Class I sales by a plant supplied by the cooperative. The bulk of the Class I sales increase occurred after the start of the base-making period. As a consequence, the members of the cooperative have not earned enough base to cover the increased fluid milk requirements of the plant.

DATE: Comments are due on or before March 31, 1988.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on dairy farmers and would not affect milk handlers.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for the months of March through August 1988:

1. Section 1007.32(a)
2. In § 1007.61(a) the words "September through January".
3. In § 1007.61(a)(5) the words "for the months of September through January".
4. Section 1007.61(b)
5. In § 1007.73(a)(2) the words "or base milk and excess milk".
6. In § 1007.75(a) the words "and the uniform price for base milk".
7. Sections 1007.90 through 1007.93.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1988 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative for the months of March through August 1988 the order's base and excess plan for paying producers for their milk.

Suspension of the base-excess plan was requested by Southern Milk Sales, Inc. The cooperative indicates that continuation of the base-excess plan for 1988 will impose a severe hardship on its dairy farmer members.

Southern Milk Sales supplies the Heritage Farms plant at Murfreesboro, Tennessee. In November of 1987, the plant began supplying fluid milk products to the Kroger stores in Florida. Such sales by the Kroger stores have increased each succeeding month through January 1988. Because these increased sales occurred during the latter part of the base-building period of September through January, the member producers currently supplying the fluid milk requirements of the Kroger plant have not earned sufficient base to cover the increased demand for fluid milk during the base-paying months. Unless the suspension action is granted, member producers of Southern Milk Sales will receive the excess price for the milk supplied for the new Class I sales while other producers receive the benefit of the increased Class I distribution.

A further reason advanced by the cooperative as a basis for the suspension is that the vast majority, if not all, of the member producers of cooperative associations supplying plants regulated by the Georgia order are not now being paid on a base-excess plan. Southern Milk Sales contends that cooperative associations pool the base-excess returns of their members and pay individual producers of their association a uniform price for their milk. The cooperative requests that the base-excess plan be suspended since it is not being utilized to achieve its primary purpose of providing a better balance in the seasonal variation of milk production.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: March 18 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88–6425 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Notice of Proposed Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to continue to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for the months of April through August 1988 the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than March 31, 1988.

ADDRESS: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington DC 20090–6456, (202) 447–7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of April through August 1988.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April 1988 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of April through August 1988. The specific revisions would increase the diversion limitation percentages for the months of April through August 1988 by 15 percentage points from the present 50 percent to 65 percent. The order's diversion limits were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of September through December 1986, from 40 to 55 percent for the months of January through March 1987, from 50 to 60 percent for the months of July and August 1987, and from 40 percent to 55 percent for the months of September 1987 through March 1988.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefitrs that accrue from such pricing.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of April through August 1988, the percentage of allowable diversions be increased 15 percentage points.

The cooperative states that the percentage of producer milk used in Class I sales under the Nebraska-Western Iowa order during January 1988 declined to 35 percent from a January 1987 level of 42 percent. During the same time period, according to NFO, the amount of producer milk pooled under the order increased 13 percent. The cooperative predicts that this pattern of increasing production and the resulting decline in the percentage of producer milk used in Class I is likely to continue in 1988. NFO states that keeping the order's diversion allowance at a level approximately equal to the marketwide Class II and Class III useage is quite appropriate.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's 50-percent diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants. In order to qualify for pooling, some of the cooperative's members' milk must be unloaded at a pool plant, then reloaded and shipped to a nonpool plant to be used. NFO states that such uneconomic milk shipments will be necessary for the months of April through August 1988 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the proposed temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of April through August 1988 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on March 21, 1988.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 88–6426 Filed 3–23–88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1210

[WRPA Docket No. 1]

Proposed Watermelon Research and Promotion Plan; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written exceptions to a proposed Watermelon Research and Promotion Plan (Plan). The proposed Plan is designed to improve the position of watermelons in the marketplace through coordinated programs of research and promotion. The proposal was submitted by the National Watermelon Association, Inc. The proposed Plan would provide for a national research and promotion program for watermelons financed by assessments paid by producers who grow five or more acres of watermelons annually and by handlers who first handle such watermelons. The proposed Plan would establish a maximum assessment rate of two cents per hundredweight of watermelons for both producers and handlers. A 29 member board composed of watermelon producers, handlers and a representative from the general public would administer the program.

DATE: Written exceptions must be received by May 23, 1988.

ADDRESSES: Four of comments should be sent to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC, 20250. The copies will be available for public inspection during regular business hours. Comments on the proposed Plan's information and recordkeeping requirements should be submitted to Lisa Grove, Desk Officer for the Agricultural Marketing Service, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, P.O. Box 96456, Room 2531–S, Washington, DC 20090–6456; telephone 202–475–3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. The Notice of Hearing was published in the February 4, 1987, issue of the **Federal Register** (52 FR 3588). A correction to the Notice was published on February 17, 1987 (52 FR 4783). A seven day Extension of Time for Receipt of Post Hearing Briefs was requested by proponents and granted on April 17, 1987. Notice of the extension was published on April 21, 1987 (52 FR 13086).

Preliminary Statement

This action is governed by the provisions of sections 556 and 557 of Title 5 of the U.S. Code, and therefore is excluded from the requirements of Executive Order 12291.

This notice is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (Plan) (7 CFR Part 1200). Any Plan that may result from this proceeding would be effective pursuant to the provisions of the Watermelon Research and Promotion Act, hereafter referred to as the "Act," (Pub. L. 99–198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901–4916).

The proposed Plan was formulated on the record of a public hearing with sessions in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987.

The national Plan would authorize the collection of equal assessments on producers and handlers of watermelons. Handlers would be responsible for collecting assessments from producers and submitting the assessments, and for maintaining appropriate records. Refunds of collected assessments could be obtained by producers and handlers who do not support the Plan. Assessment funds would be used to promote watermelons through a variety of market research and product promotion programs. These programs would be developed and administered by a Board composed of watermelon producers and handlers by their peers throughout the country. Daily administration of the Plan would be carried out by a staff of employees directly responsible to the Board. All administrative rules and regulations as well as research and promotion programs developed by the Board must be submitted to the Secretary of Agriculture for approval.

Small Business

In accordance with the Regulatory Flexibility Act (RFA), (5 U.S.C. 601 *et seq.*), the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to persons covered under the proposed Plan. Promotion plans and their administering rules are unique because they are normally brought about through group action of essentially small businesses for their mutual benefit. Therefore, both the RFA and the Act are compatible with respect to small business entities.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed Plan, are defined as those with gross annual revenues of less than $3.5 million.

The majority of watermelon producers and handlers may be classified as small entities. Testimony indicates that the industry is composed mostly of small entities engaged in the production and marketing of watermelons. Hearing evidence also indicates that watermelons are produced on almost 12,000 farms in the United States. There are a significant number of small farms, particularly in the northern States, where less than five acres of watermelons are produced for sale. Producers of less than five acres would not have to pay assessments under the Plan because the term "producer" would be defined as any person engaged in the growing of five or more acres of watermelons. The industry also includes a few large farms in excess of 400 acres.

The proposed Plan would assess both producers and handlers at equal rates, not to exceed two cents per hundredweight. The record indicates a unanimous agreement by those testifying that this amount would be relatively insignificant and should not impose a financial burden on large or small producers and handlers. The benefits of the proposed program are expected to exceed the costs. Based upon 1981 production of watermelons, it is estimated that collection of assessments could be as much as $1,122,000 if the maximum assessment rate of two cents per hundredweight of watermelons were implemented for both producers and handlers. This would represent less than 1 percent of producer income and less than 1 percent of handler income if watermelons were selling at 6 cents a pound (based upon 1979–81 average prices). Both producers and handlers have the right to request a refund of assessments.

While the proposed Plan imposes certain recordkeeping requirements on handlers, information required to be reported under the proposed Plan could be compiled from records currently maintained by the handlers. Thus, the record indicates that any added burden resulting from increased recordkeeping

would not be significant when compared to benefits that should accrue to such businesses. All businesses, large and small, would be treated equally under the proposed Plan. The Plan would impose no disproportionate recordkeeping burdens on any group of small businesses within the industry. There are no reporting or recordkeeping requirements for producers in the proposed Plan.

Based on the above, the Administrator, Agricultural Marketing Service, has determined that the proposed Plan should have no significant adverse economic effect on small businesses in the industry.

In determining that the proposed Plan will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The Plan's provisions were carefully reviewed and every effort was made to minimize any unnecessary costs or requirements. Although the Plan would impose some additional costs and requirements on handlers, and possibly some producers, it is anticipated that the programs under the proposed Plan would help to increase demand for watermelons. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the proposed provisions of the Plan would not have a significant impact on handlers or producers.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this proposed Plan have been submitted to OMB for review. Comments concerning these requirements should be directed to Lisa Grove, Desk Officer, Agricultural Marketing Service, Office of Management and Budget.

Material Issues

The material issues of record are as follows:

1. The movement of watermelons in the channels of interstate commerce;

2. The need for the proposed research and promotion Plan as a means of effectuating the declared policy of the Act;

3. The specific terms and provisions of the proposed Plan including:

(a) Definitions of the commodity, the persons to be assessed, and the other terms set forth in the Notice of Hearing, which are applicable to the provisions of the proposed Plan;

(b) The establishment, composition, maintenance, powers, duties and operation of a "National Watermelon Promotion Board" which shall serve as the administrative agency of the proposed Plan;

(c) The authority to establish research and promotion programs for watermelons;

(d) The authority for the National Watermelon Promotion Board to incur expenses and for the Secretary of Agriculture to levy assessments on watermelon producers and handlers who first handle watermelons;

(e) The authority to exempt from assessments a producer who produces watermelons for non-food uses;

(f) The procedure for making refunds of assessments to producers and handlers who request them;

(g) The authority to establish an operating monetary reserve and to set aside funds in the reserve to defray any authorized expenses;

(h) The authority to establish reporting, record keeping and confidentiality requirements, and

(i) The establishment of other miscellaneous provisions which are set forth in the Notice of Hearing as §§ 1210.360 through 1210.367.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the Record of Hearing.

1. The 1982 Census of Agriculture, the most recent census with watermelon statistics, shows that watermelons were grown in 44 of the 48 contiguous States in 1981. That census tallied nearly 12,000 farms producing approximately 28 million hundredweight of watermelon. Florida alone produced about 30 percent of the annual crop. Florida and three other States, Texas, Georgia and California, produced almost 63 percent of the nation's annual watermelon crop.

The record indicates that similar varieties of watermelons grown throughout the United States are generally uniform in appearance. Consumers cannot generally distinguished between, for instance, a watermelon from Georgia and one of the same variety from north Texas or Oklahoma. Thus, watermelons are homogeneous products competing for similar national markets. At peak periods in mid-summer, it is not unusual for handlers across most of the southern States to compete for the same markets in northern cities.

Watermelons are a warm weather crop. The season runs from late May to mid-September. For instance, Florida and south Texas producers begin harvesting watermelons in late spring and are more than halfway through their crops' harvest as States further north begin harvests later in June.

The relatively few, small producers in the Northeast, Midwest, West and Northwest meet only a portion of their local demand. The large volume of interstate commerce of watermelons is from the southern producing rgions to the metropolitan areas in the northern States. Highest consumption periods fall around the major summer holidays of Memorial Day, the Fourth of July and Labor Day.

Watermelons are put into the current of commerce in several different ways. Small producers may utilize roadside stand and local farmers' markets, usually performing all of the handling and marketing themselves. On a larger scale, watermelons are collected in the field, sorted, graded and weighed before being shipped to market. Contract carriers are often used for distant hauling.

Handlers, or "shippers" as they are called in the industry, usually carry out these functions, purchasing truckloads at a per-pound price. They add costs and a commission before selling to large buyers such as food store chains, usually outside the local market area. While most all producers have a choice of handlers to whom to sell their watermelons, testimony indicates that most producers use the same handler from season to season.

There are also watermelon "brokers" who do not take possession or ownership of the watermelons. "Pure" brokers, according to the record, act simply as sales agents for producers, finding buyers and arranging sales in distant markets. They do not arrange transportation for the watermelons or carry out monetary transactions. These brokers would not be considered handlers under the Plan. According to the record, "buying" brokers who arrange sales, ship and handle the monetary transaction between the producer and the buyer would be considered handlers.

Testimony indicates that watermelons are sold at the retail level by the piece and by the pound. Piece pricing is generally used for smaller production amounts and for sales in local markets. Truckload shipments to distant markets are generally priced by weight.

Imports come almost exclusively from Mexico. Record evidence indicates imports in 1981 were less than three percent of the national watermelon producion. The record shows that from 1975 to 1985, less than half of annual

watermelon imports arrived during the summer production season in the United States. Therefore, imports do not appear to present a competitive challenge to the industry.

U.S. exports of watermelons are mostly to Canada. However, this market is relatively small compared to the corresponding summer market in the United States. Approximately 2 percent of U.S. watermelon production in 1981 was exported.

There is ample evidence in the record to show that watermelons produced in the United States are shipped in intrastate, interstate and foreign commerce, and that the intrastate and interstate handling is so inextricably intermingled that all such handling burdens, obstructs or affects the handling of watermelons in interstate or foreign commerce. In addition, Congress has found that watermelons move in the channels of interstate commerce, and those watermelons that do not move in such channels directly affect interstate commerce.

2. The majority of watermelons are produced for fresh market sales, with only a small percentage being used for processed products or for non-human use such as seed production or animal feed.

At the hearing, proponents of the proposed Plan testified that the watermelon industry is in serious trouble because of an apparent decrease in demand. Record exhibits indicate a significant and steady decline in per capita consumption of watermelons between 1960 and 1981. During that period total production declined 16 percent from 31 million hundredweight in 1960 to 26 million hundredweight in 1981 while population increased 27 percent. Record evidence shows the U.S. per capita consumption was 17.2 pounds in 1960 and 12.3 pounds in 1981, a 30 percent decline. The record also shows that this per capita consumption pattern has not changed in recent years.

No testimony was provided that would explain the decline in per capita consumption of watermelons. However, proponents testified that under the proposed research and promotion Plan, this issue would be studied, possible causes identified, and corrective programs initiated.

Although watermelons production declined during the 1960's and 1970's, total value of the crop increased from $38.1 million in 1960 to $158.9 million in 1981. Most of this increase in value reflected inflationary changes rather than rises in real dollar income. In adjusted, constant 1977 dollars, the total crop value of watermelons increased from $102.4 million in 1960 to $117.7 million in 1981. This is an increase in crop value of only 15 percent for the entire 21 year period. The comparable value of 28 vegetables and melons increased three and a half times over the same period. Fresh fruit market prices increased threefold during the same period, as did fresh vegetable prices and the consumer price index for all foods.

As objective of the Plan is to increase industry revenue by increasing sales of watermelons. The record indicates that producers could respond to such increases in demand by putting more acreage into watermelons. Because most watermelon producers raise other crops, production resources could be shifted to meet increases in demand.

The record identifies five general categories of watermelon producers. The first is home gardeners whom raise small garden patches for personal consumption. The second category is small acreage producers who sell their watermelons retail at roadside stands. The third category is composed of small acreage producers who market their watermelons through farmers' markets. Many producers in these latter two categories are part-time farmers who hold other jobs. A fourth category is the medium volume, full-time producers who normally sell their field-run watermelons through handlers. Finally, there are large volume producers, many of whom act as their own handler and market the watermelons they produce. They are often handlers for smaller producers in the area.

Acreage planted on individual farms may vary from season to season depending on the producers' projected needs for a ready cash crop and on their projections of the demand and supply of the product for the next growing season.

Watermelons are a second, third or even fourth crop for almost all producers. It is considered a "cash crop" in that most sales are direct from producers to handlers and often entail an immediate cash payment. Testimony indicates that watermelons are a favorite crop for producers in some areas because they are reliable, relatively easy to produce and usually provide a quick cash return.

The record indicates that the national average f.o.b. shipping point price, as reported by the USDA's Agricultural Statistical Board in 1981, was $6.09 a hundredweight. The three-year average from 1979 to 1981 was $5.74 per hundredweight and has not varied significantly since them. Thus, the average price would be approximately six cents a pound.

Testimony indicates that price has very little to do with the quality of watermelons in a shipment. Rather, prices are very sensitive to supply, and vary on a daily basis during the entire summer production season. Prices early in the season, when suppy is low, are considerably higher than prices later in the summer. Record evidence indicates that May prices for Florida and south Texas watermelons can be almost double the amount that watermelons from those two areas will bring in July when other areas are harvesting. Prices also increase prior to the three-day summer holiday weekends.

According to the record, special varieties such as seedless or orange-skinned watermelons often demand double the price of common watermelon varieties, and can bring 10 to 15 cents a pound on the market.

Hearing witnesses were unanimous in their belief that coordinated, national, promotion programs, including paid advertising and public relations, would eventually result in an increase in demand and thus an increase in per capita watermelon consumption. Cooperative advertising with compatible products would also be a possibility. In addition, several possible market research programs were mentioned that could result from such an effort. For example, research might develop new handling or packaging methods that could improve distribution efficiency and save marketing costs. Improvements in protective packaging and containerization could improve the product's condition on arrival at retail outlets, thus presenting a more favorable image to improve its competitive position.

It is also recognized that over the last 25 years, changes have taken place in consumer eating habits, as well as in the marketing of food products. Witnesses suggested that market research and consumer preference studies could be conducted to determine what these changes are and what the industry and its individual producers and handlers might do to improve their product in the eyes of consumers. Efforts could be made to increase the consumer's confidence in judging the quality and ripeness of watermelons. The record indicates that much research could be done to improve the product's presentation at the point of purchase with attractive displays coordinated with national promotional campaigns. Nutritional values and the variety of uses for fresh watermelons would be likely focal points of national promotional efforts. Menus showing creative new ways to serve watermelons could be developed and distributed nationally. Testimony

indicates that programs such as these would increase the demand for watermelons throughout the summer production season, thus raising demand and increasing per capita consumption. Testimony indicates that promotional campaigns would benefit both the industry and the consuming public.

The watermelon industry has never attempted a national effort to promote its product. The proposed Plan appears to be the only practical method for individual producers or handlers, or groups of producers or handlers, to sponsor such a national program. No watermelon association has a broad enough membership base, or sufficient financial resources, to carry out its own program. Testimony indicates that only through the combined efforts of all watermelon producers and handlers can such a program be developed and carried out.

The Act requires that in such a national program, promotional material would be generic in nature and would not feature individual producers, handlers, States or regional production areas. However, there should be no limitation on individual producers and handlers who want to promote their own watermelons through additional promotional efforts.

The record indicates that a national program could also be very helpful in counteracting negative publicity that might be damaging to the industry. Given that demand is so dependent on consumer attitudes, it could be beneficial for the watermelon industry to have a central organization to represent it to the news media and to consumers.

The National Watermelon Association (NWA) is the only industry association that is national in scope. In addition, there are State watermelon associations in Florida, Georgia, South Carolina, North Carolina, Mississippi, Missouri and Virginia. Producers and handlers in Maryland and Delaware and in Texas and Oklahoma have formed two bi-State organizations. Producers and handlers in California, one of the largest watermelon producing States, are in the process of organizing a State association. All State associations are voluntary in nature and most carry out limited Statewide and regional promotional activities usually centered around the watermelon queen tours and point of purchase materials. None of the voluntary associations have the resources to carry out extensive market research and promotion activities and none have mandatory assessments on watermelon production.

In addition to the voluntary association which exists in South Carolina, South Carolina has the only State government statute authorizing a State watermelon board. Its expressed purpose is to promote watermelon consumption in the State and in regional markets. The South Carolina Watermelon Board is unique in the watermelon industry in that it has State government authority to collect mandatory assessments from watermelon producers in South Carolina.

Under the proposed Plan, a great deal of statistical information on watermelon production and marketing would be accumulated through handler reports to the Board. Handler testimony is unanimous that such reporting requirements would not impose undue burdens on their operations. Testimony indicates that individual producers could find this information very helpful in determining the next year's production level and handlers could use marketing information to expand or redefine their marketing efforts. In general, the industry would be in a better position to operate efficiently and serve consumers if it had a recent data base of information on which to evaluate its current performance. Because annual production figures are no longer compiled by USDA, there is no other systematic collection of such national statistical information.

The record indicates unanimous agreement of those testifying at the hearing that the proposed maximum assessment rate of two cents per hundredweight would be acceptable to producers and handlers. At an average selling price of six cents per pound, the maximum assessment rate would be less than 1 percent of the producers' and handlers' incomes from watermelons. An assessment of two cents per hundredweight on both producers and handlers could result in the collection of over $1 million, based on 1981 production figures. This amount would be the Board's annual budget.

Testimony was unanimous that the watermelon industry needs one unified, representative body to carry out research and promotion programs across the country. Not one witness testified in opposition to the proposed Plan. The record supports the proposed research and promotion Plan as a means of providing a method of increasing U.S. per capita consumption of watermelons and for improving the watermelon industry's position in the marketplace. The proposed Plan would provide a means of effectuating the declared policy of the Act.

3(a) Definitions

Certain terms are used frequently throughout the plan. These terms are defined as follows to clarify their meaning and to simplify the subsequent provisions in which they are used:

"Secretary" should be defined to include not only the Secretary of Agriculture of the United States, but also, any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to act for the Secretary.

The definition of "Act" refers to the Watermelon Research and Promotion Act of 1985 (7 U.S.C. 4901–4916), the statute pursuant to which the proposed Plan may be put into effect and operated. The use of the word "Act" avoids the need to refer to the full citation each time it is used.

"Plan" should be defined as the Watermelon Research and Promotion Plan issued by the Secretary pursuant to the Act.

The term "Board" should be synonymous with "National Watermelon Promotion Board" and should be defined to identify the administrative agency established under the Plan. The Board is authorized by the Act.

"Watermelon" should be defined as all varieties of watermelons of the Family Curcubitaceae, Genus and Species; Citrullus Lanatus, grown by producers in the 48 contiguous States of the United States. The term has been revised to include a reference to varieties. Delegates from the South Carolina Watermelon Board testified at the hearing and submitted a brief that added "or handled by handlers" to the definition of watermelon. This proposed change would apply to all watermelons that are handled in the United States but are not produced in this country. It was intended to make imported watermelons subject to the assessment provisions of the Plan. It was noted that since generic promotional activities will apply to all watermelons, imported watermelons would also benefit from such promotion, and should thus be assessed. However, the Act specifically defines watermelons as all varieties of watermelons grown by producers in the 48 contiguous States. Since this definition does not include imported watermelons, such imports are not subject to provisions of the proposed Plan.

The term "watermelon products" has been deleted from the definitions which appeared in the Notice of Hearing. The proposed Plan would apply to only watermelons in order to conform with the provisions of the Act.

"Producer" should be defined to mean any person engaged in the growing of five acres or more of watermelons, and should include any person who owns or shares in the ownership and risk of loss of such watermelon crop such as a land owner, landlord, tenant or sharecropper. The record indicates that the person who owns and farms land resulting in the ownership of the watermelons produced on such land should be considered a producer. The same is true with respect to the person who rents and farms land resulting in ownership of all or part of the watermelons produced on that land. Likewise, a person who owns land and does not farm it, but may obtain ownership of a portion of the watermelons produced on the land as all or part of the rental agreement, should be regarded as the producer of that portion of watermelon production specified in the rental agreement. A person who receives only a fixed sum of rent on land which is used to produce watermelons should not be considered a producer.

"Handle" should be defined in the Plan to mean those activities which place, or cause to be placed, watermelons in the current of commerce. It is not meant to apply to a harvest crew operation, or a common carrier who simply collects and transports watermelons from the field to a handler. It is also not meant to apply to the activities of a broker or commission agent who has not taken title to, or possession of, the watermelons.

The term "handler" should be defined in the Plan to mean any person who places or causes watermelons to be placed in the current of commerce. For the purposes of assessment payments and reporting and recordkeeping, the handler who first introduces watermelons into the current of commerce is responsible for the payment of assessments and for the reporting and recordkeeping requirements of the Plan.

Buying brokers, a term commonly used in the industsry to refer to those who purchase watermelons and make arrangements with others for resale, should be considered handlers, according to record evidence. The term should also apply to auction market buyers and farmers' market wholesalers who purchase watermelons from producers and sell to the retail trade.

Any producer who handles all or part of this or her own watermelon production should be considered a handler of that production and should pay both the producer and handler assessments and meet all reporting requirements. A producer who also acts as a handler, when taking part in the Board's nomination process, should be considered a handler and can serve on the Board only in the capacity of a handler. The term "handler" should apply to any individual, group of individuals, partnership, corporation, association, cooperative or any other business unit which receives watermelons from producers or causes watermelons to be handled for the first time.

"Person" is defined in the Plan to mean any individual, group of individuals, partnership, corporation, association, cooperative or other entity. Such an entity defined in the Plan as a "person" should be considered as one producer or one handler for the purposes of nominating and voting on members as part of the Board selection process.

"Processor" is a term that is not used in the proposed Plan and has been deleted.

The terms "fiscal period" and "marketing year" should be defined to mean the twelve month period beginning on January 1 and ending on December 31 of the same year, or any other such period which may be approved by the Secretary.

"Programs and projects" should be defined to mean those activities established pursuant to § 1210.331 of the proposed Plan. These programs and projects refer to, but are not limited to, research, development, advertising or promotion activities developed by the Board.

"Promotion" should be defined as any action taken by the Board, pursuant to the Act, to present a favorable image of watermelons to the public with the expressed intent of improving the competitive position and stimulting the sale of watermelons. This would encompass all promotional activities, including paid advertising. The Plan permits only generic advertising carried out using assessment funds. In addition, cooperative advertising with compatible products must make only generic reference to watermelons.

"Research" should be defined as any type of systematic study or investigation and/or evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons. While scientific or varietal "research" can be included within the scope of the Plan, the main focus of the program would be market research.

3(b) National Watermelon Promotion Board

An administrative agency known as the "National Watermelon Promotion Board" is authorized by the Act. The Board would administer the Plan, recommend rules and regulations to carry out terms and conditions of the Plan, ensure its compliance, and recommend amendments of the Plan to the Secretary.

As provided for in the Plan, the Board should be composed of 28 members from the watermelon industry and one representative from the general public. The 28 members should be selected by the Secretary from nominations submitted by separate nominating conventions, meetings, or caucuses held in seven districts in the contiguous 48 States. The public representative should be nominated by the Board and approved by the Secretary of Agriculture. Composition of the Board should reflect the fact that watermelons could be grown commercially in all 48 contiguous States.

The size of the Board should be large enough to assure adequate representation of the nationwide industry and yet small enough to keep costs to a minimum. This would be accomplished through a district representation plan that should be based on watermelon production volume. Based upon production volume of the States, seven districts should be created in this Plan, each with an annual production volume of approximately 400 million pounds. Each district should have two producer and two handler representatives on the Board.

To establish the initial district alignment, production statistics were taken from the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981—the latest such statistics available. The districts should be aligned as follows:

District #1—South Florida including all areas south of State Highway 50.

District #2—North Florida including all areas north of State Highway 50.

District #3—The States of Alabama and Georgia.

District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.

District #6—The State of Texas.

Disctrict #7—The States of Arizona, California, Nevada, Utah, Oregon,

Idaho, Wyoming, Washington, and Montana.

Florida should be divided into two districts because it produces nearly one third of the total national production. The east-west dividing line along State Highway 50 is recommended by the Florida Watermelon Association because it would divide, as closely as possible, the production volume of the State in half. Texas produces enough watermelons to stand alone as one district. The remaining four districts are multi-State districts and together produced just over half of the total national volume based on the USDA Crop Production Annual Summary Reports of 1979, 1980, and 1981.

Testimony of representatives of the South Carolina Watermelon Board suggested changing the time period from five years to two years for reviewing this initial district alignment. Because the above district alignment plan is based on statistics that are already six to nine years old, it should be subject to review and realignment by the Board two years after its implementation, rather than waiting five years as proposed in the original Plan published in the Notice of Hearing. Section 1210.320(c) has been changed to reflect this earlier district realignment review. Review of subsequent district alignments should be carried out by the Board at least every five years thereafter.

In making its recommendation to the Secretary for district realignment, the Board should use production statistics compiled from reports submitted to it by handlers as part of their reporting requirements under the Plan. The Board should also use any other recent, verifiable production reports from USDA, and if available, other documented shifts and trends in quantities of watermelons produced, or other relevant information.

In order to help ensure that district realignments are as fair, equitable and timely as possible, any realignment must be submitted to the Secretary at least six months prior to the "call for nominations" for new Board members. The Secretary must approve such realignment at least 30 days prior to the call for nominations. The original Plan, as published in the Notice of Hearing, proposed that realignment recommendations should be made six months prior to the start of new Board member terms. However, this sequence of events would not take into account the nominations process which would begin at least five months earlier. As originally provided in the Notice of Hearing, district realignment would have been made after the nominations process using the old alignment had already begun, and thus would not have been timely. As part of its responsibilities, the Board should clearly define the time frames, schedules and procedures for district realignment in the Plan's rules and regulations.

Only watermelon producers and handlers who pay assessments should be eligible to serve as members of the Board. Watermelon producers, as defined in the Plan, should be the only ones to take part in the nomination process to select producer members on the Board. In like manner, watermelon handlers, as defined in the Plan, should take part in the nomination process to select handler members to the Board. In cases where producers are also handlers, those producers should be considered as handlers and should participate in the nomination process as handlers and serve as handler members on the Board.

The Act mandates that there should be an equal number of watermelon producers and handlers on the Board. The term of office for Board members should be three years beginning on January 1. Normally, the term of office would begin the year after they were nominated and appointed by the Secretary. The Plan provides that no Board member may serve more than two consecutive terms of office. Testimony indicates that limiting the number of consecutive terms should permit a regular rotation of members with different points of view and should facilitate the infusion of new ideas in the administration of Board activities.

It would be in the interest of the industry that the Board be appointed by the Secretary as soon as possible after the Plan is issued. Thus, it is possible that the initial Board would be appointed several months before January 1 as prescribed above. The term of office of the initial Board members should begin immediately upon appointment by the Secretary and should continue until the scheduled end of their term of office. Any interim period between their appointment and the following January 1 should not be considered part of their prescribed term of office. Testimony at the hearing and briefs filed after the hearing included changes to § 1210.322(b) to this effect.

The 29 initial Board members (including the public member) should serve staggered terms of office so that continuity of the Board will be ensured. According to the Plan as published in the Notice of Hearing, staggered terms of office should be determined by lot. However, the Secretary must appoint Board members for specified terms of office, which, under the lot system, would not be determined until after their appointment by the Secretary. In addition, a random determination of staggered terms could mean that some or all districts would have members whose terms would expire in each of the three years, and those districts would be obligated to hold district conventions every year thereafter. This would be time consuming, difficult to administer and financially burdensome on watermelon producers and handlers in those districts.

A practical method for determining staggered term lengths would be as follows. The two producers and two handlers from District 1 (south Florida) and the two producers and two handlers from District 6 (Texas) would serve initial terms of one year. The two producers and two handlers from District 2 (north Florida) and District 3 (Alabama and Georgia) would serve initial terms of two years. Initial Board members in the remaining three districts (4, 5 and 7) would serve three year terms of office. Thus, § 1210.322(a) of the proposed Plan as published in the Notice of Hearing should be revised to reflect this change.

Consistent with testimony presented at the hearing, the four producer and four handler initial Board members from south Florida and Texas who serve only one-year first terms should be eligible to serve two additional terms if so nominated in their districts and appointed by the Secretary. All other initial members would be eligible for only one additional term of office.

The Act and the Plan do not provide for alternate Board members. Section 1210.322(d) of the Plan published in the Notice of Hearing referred to "alternates" on the Board. This reference has been removed.

Definitions written in the proposed Plan should be used to determine eligibility of producers and handlers. Only producers and handlers of watermelons may take part in the selection process and serve on the Board. Producers of less than five acres are not considered producers under the Act and therefore do not pay assessments and cannot participate in the nomination process or sit on the Board.

Testimony was received on § 1210.321 concerning nominations and selection of Board members. The principal vehicle for such nominations should be nomination conventions. In the Notice of Hearing, § 1210.321 only contained provisions for nominations by the Board. A new paragraph should be added to

that section to provide that the nomination of the initial Board members should be conducted by the Secretary. In addition, the terms meetings and caucuses have been removed as unnecessary.

The nomination process for Board members would follow procedures described below.

The Board should issue a call for nominations by February 1 of each year in which an election is to be held. The call should include at a minimum, the following information:

(1) A list of the vacancies and qualification as to producers and handlers by district for which nominees may be submitted;

(2) The date by which the nominees should be submitted to the Secretary for consideration;

(3) A list by district of those States entitled to participate in the nomination process; and

(4) The date, time, and location of any known next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

Nominations for positions that will become vacant should be made by district convention in the district entitled to nominate. Notice of such convention should be publicized to all producers and handlers within such district, and to the Secretary at least ten days prior to said event. The notice should have the call for nominations from the Board attached to it. The responsibility for convening and publicizing the district convention should be that of the then members of the Board from that district.

All producers and handlers within the district may participate in the convention. However, if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler should participate within the State or district in which the producer or handler so elects in writing to the Board. Such election should remain controlling until revoked in writing to the Board.

The district convention should conduct the selections process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There should be two individuals nominated for each vacant position. Each nominee should meet the qualifications set forth in the call and in § 1210.323.

(2) No single State in multi-State districts (currently Districts 3, 4, 5 and 7) should have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention should have one vote which should be determined by the producers and handlers from that State by majority vote. Each State should further have an additional vote for each 500,000 hundredweight volume as determined by the three-year average annual crop production summary reports of the USDA. If such reports are not published, the three year average of the Board assessment reports should be used. For the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 should be used.

Vacancies that may occur on the Board should be filled through the procedures for nominations. The Plan uses the term "category of members" to distinguish between producer Board members and handler Board members. A vacancy on the Board should only be filled by a person qualifying in the same producer or handler category as the departing member. As suggested in record testimony, if a vacancy occurs within six months of the scheduled end of the term, then a replacement Board member does not have to be named for the remaining period of the term.

Witnesses suggested that fifteen members of the Board should constitute a quorum at an assembled meeting of the Board. In accordance with testimony, the Plan should provide that action taken by the Board requires the concurrence of a majority of the votes cast, and all such votes should be cast in person. No proxy voting should be allowed. The Board should be authorized to vote by mail, telephone, telegraph or other means of communication when a matter to be considered is so routine that it would be unnecessary or not cost-effective to call an assembled meeting, or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast.

The Act requires that Board members serve without compensation. However, they should be reimbursed for reasonable expenses incurred in performance of their duties as members of the Board.

The Act lists certain powers and responsibilities of the Board. The Board should have the authority to develop and recommend to the Secretary rules and regulations needed to implement and carry out the terms of the Plan. The Board's authority should be broad and flexible, providing it with efficient and effective management tools to administer the program. Such administration should include the development and recommendation to the Secretary of all fiscal matters, programs or projects, rules and regulations, reports and other substantive actions.

The rules and regulations issued under the Plan should include procedures on how assessment provisions would be administered and how violations of such provisions of the Plan would be handled. It is the responsibility of the Board to promptly investigate alleged violations of the Plan. In cases where the Board cannot attain payment of assessments, it should report those violations to the Secretary for appropriate action.

Finally, the Board should have the power to make, and recommend to the Secretary, amendments to the Plan and to the rules and regulations issued under its authority. Such amendments or changes may be brought before the Board during its meetings. Amendments may reflect refinements to existing provisions of the Plan that are necessitated by changing conditions in the industry.

The duties of the Board should be set forth in the Plan to enable it to discharge its responsibilities. They should be reasonable and necessary if the Board is to function in the manner prescribed under the Act.

The Board should meet, organize and select from among its members a president and such other officers as may be necessary to conduct its business. The Board should be authorized to appoint ad hoc committees and subcommittees as it may deem necessary. Only Board members may serve on such ad hoc committees. The creation of ad hoc committees should allow the Board to ask for help and seek the advice of knowledgeable persons or consultants in all segments of the industry. The record indicates that the term "working committee" should be substituted for the term "advisory committee" used in Notice of Hearing § 1210.328(a). The term "working committee" more accurately describes the nature and authority of such committees. Any actions taken by committees and subcommittees should be subject to the approval of the Board.

Since day-to-day administration of the Plan cannot be performed by the Board, another duty of the Board should be to employ such persons as necessary to administer the daily operations of the program. The Board should establish the duties of these employees and the compensation for each person on the staff. The record indicates that

designated employees of the Board will have access to assessment information that would not be distributed to the Board members for confidentiality reasons, as provided for under § 1210.352. The employees of the Board should also be bonded to ensure that the Board would be protected against loss of funds through wrongful action by its employees.

In order to plan and conduct activities, it should be the Board's duty to prepare a fiscal budget that would cover anticipated administrative and program expenses. This budget would have to be approved by the Secretary and should include a recommended rate of assessment.

The Board should have the duty to develop programs and projects, and to enter into contracts for conducting market research, development, advertising or promotion campaigns. Such programs, projects and contracts must be approved by the Secretary and should be paid for with assessment funds collected under the proposed Plan.

The Board should ensure that minutes, books and records are kept that clearly reflect all acts and transactions of the board. "Minutes" should include points of discussion, motions, results of vote taking and resolutions adopted. Copies of such minutes should be provided to the Secretary and to all Board members as soon as practical after each meeting. "Books" refers pricipally to financial records. Such financial records must account for the receipt and disbursement of funds and should be audited by a certified public accountant at least once each fiscal period and at other times as may be necessary. Such financial records should be reported to the Secretary at least on an annual basis, and from time to time, as may be required for the appropriate accounting of funds entrusted to the Board. The audit report should also be submitted to the Secretary and made available to the producers and handlers in the industry, except that information on assessments paid and amounts refunded to individual producers and handlers would be maintained in a confidential manner. "Records" refers to all other transactions engaged in by the Board.

The Board should have the authority to enter into contracts or agreements, with the Secretary's approval, for the development and execution of programs and projects of research and promotion. Payment of contract costs should be made with assessment funds collected under the Plan.

It was pointed out in the hearing that under the provisions of § 1210.328 on Duties, as published in the Notice of Hearing, paragraph (p) essentially repeats the second half of paragraph (d). Both paragraphs authorize the Board to enter into contracts in order to carry out research and promotion projects as authorized by the Act. Therefore, paragraph (p) is deleted in this recommended decision.

3(c) Program Authorities

The Board should have the authority to determine the types of research and promotion programs to be carried out under the Plan, and to administer such programs. These programs should include market research and product promotion activities designed to strengthen watermelons' competitive position in the marketplace, maintain and expand existing markets and develop new markets. The Board should have the responsibility of recommending all such programs to the Secretary of Agriculture for approval.

The record indicates many areas for market research activities. One research effort could try to improve conventional methods of handling, distributing and packaging watermelons. Improved handling methods might reduce product bruising and therefore the loss of product and profits. Other market research might indicate more efficient market distribution and ways of getting the product to the marketplace. Market research might lead to technological improvements in protective shipping containers.

A second market research effort could determine why the per capita consumption of watermelon has declined over the last 20 to 25 years. Studies of consumer buying habits regarding watermelons have never been conducted. Such studies could help identify changes in consumer tastes and buying habits and could explore how watermelon promotion efforts might adjust to changing market conditions. Market research might determine segments of the market that need to be strengthened. Such research could lead to more competitive point of purchase displays or packaging of watermelons to meet new consumer preferences for ease of handling and gourmet product lines.

Promotional efforts could also be made to educate the consumer on the desirability of eating fresh watermelons. Consumer education campaigns could be conducted on how to judge the quality and ripeness of watermelons. Watermelons could be promoted for their nutritional value and natural wholesomeness. Nationwide promotional campaigns could be developed giving new recipes and ways to use watermelon in traditional recipes.

Both the Act and the proposed Plan provide for expansion of sales to foreign markets for watermelons produced in the United States. While watermelons are currently exported to Canada, additional marketing opportunities exist in that country and in other countries.

As noted above, there are no noticeable variations in watermelons of the same variety grown in different regions of the United States. Consumers are not able to distinguish between similar varieties of watermelons grown in the Southeast from watermelons grown in the West. The Board should be able to conduct national promotion and advertising campaigns featuring major watermelon varieties without favoring one production region against another. However, because watermelon is a distinctly warm weather crop, each State's peak production period varies with the summer heat. Therefore, timing and geographic focus of promotional and advertising campaigns must be carefully considered and controlled by the Board to insure fairness and equity for all production regions.

Both the Act and the proposed Plan give contractual authority to the Board so that it may carry out promotional and advertising programs. Prior to such contracting, the approval of the Secretary should be obtained to ensure that the programs are consistent with the terms and conditions of the Plan.

The Act prohibits the use of false or unwarranted promotional or advertising claims on behalf of watermelons. It also prohibits false or unwarranted statements about the attributes or use of any products that compete with watermelons in the marketplace.

All such promotion and advertising programs and their projected budgets should be submitted by the Board to the Secretary for approval. The costs for such promotion programs should be paid for with assessment funds, as authorized by the Act. After a program has been initiated, it should be evaluated periodically by the Board to ensure that it continues to be effective. If the Board or the Secretary finds that a program does not further the purposes of the Act, that program should be terminated.

This Plan deals exclusively with research and promotion programs and does not authorize any grade standards, supply management or other programs that limit the right of the individual watermelon producer to produce or sell watermelons.

The Board should have a wide choice of different market researh and promotion programs to use in its promotion efforts. The use of various research and promotional techniques, including paid advertising and public relations activities, should stimulate

sales, increase consumption, and enhance returns to producers and handlers. Therefore, the use of these program activities, as contemplated under the Plan, should be authorized. Such authority should be broad and flexible to the extent permitted under the Act. However, the record indicates that the Board, in its advertising or other promotion efforts, should treat all watermelon production fairly and equitably. Since references to private brand or trade names could serve to further the interest of individual producers, handlers, States or production regions, such references are prohibited by the Plan.

3(d) Assessments

The Board should have the authority to incur expenses in the process of developing and administering the program. The primary source of funds to cover these expenses should come from assessments collected from the watermelon producers and handlers required by the Act.

It is the Board's responsibility to prepare a fiscal budget that carefully details anticipated administrative and program funding needs. The budget should include a rate of assessment that would provide adequate funds to meet these expenses, finance operations and provide for reserve funds. The rate of assessment would thus be reviewed and established on an annual basis. The Secretary would have the responsibility for approving the rate of assessment based on the Board's recommendation.

The assessment would be paid on all fresh market watermelons and watermelons intended for watermelon products as defined in the Plan. If exempted, assessments would not be collected on watermelons produced for non-human ue such as animal feed and for watermelons produced as seed stock. Producers and handlers should pay equal assessments based on the volume of watermelons produced by producers and first handled by handlers. Through its authority to establish rules and regulations, the Board should issue, and the Secretary approve, provisions outlining how and when the assessments would be paid.

The Plan provides that the same assessment rate should be paid by both producers and handlers. The assessment should not exceed two cents per hundredwight for each party. This assessment rate could be increased above two cents per hundredweight by an amendment to the Plan. As proposed in the Plan, the total maximum assessment collected by the Board may be four cents per hundredweight on any quantity of watermelons. This maximum rate was recommended in testimony at the hearing and was entered in the proposed Plan after considerable deliberation in the industry. The hearing record indicates a unanimous agreement by those testifying that this amount is relatively insignificant compared to total production costs, and should not present a financial burden on large and small producers or on handlers. However, the record also indicates that two cents a hundredweight is about as high a rate as could be assessed without meeting opposition from the average producer. Thus, a two cent assessment applied to a trailer loaded with 40,000 to 45,000 pounds of watermelons would mean a $8.00 or $9.00 payment by the producer.

The record indicates that, based on a national average selling price of $6.00 per hundredweight of watermelon, the maximum assessment rate would be less than one half of one percent for each producer. The record indicates that this assessment rate would be adequate to collect funds needed by the program. Such funds would be used for research, development, advertising and promotion of watermelons. The assessment funds would also pay for the administrative expenses incurred by the Board and for administrative and referenda costs incurred by the Department of Agriculture in its oversight capacity. In order to assure the continuance of the Board, the payment of assessments should continue even if particular provisions of the Plan are suspended or otherwise become inoperative.

The handler should be responsible for the collection of producer assessments. The handler should remit to the Board the producer's assessment along with the handler's assessment for the same watermelon. The handler may collect the producer's assessment, or deduct the producer's assessment from the amount paid to the producer. The timing of such payments to the Board should be included in the rules and regulations that should be developed by the Board. Separate records for each producer should be kept by the handler.

In cases where a producer is also the handler of watermelons, the producer would pay both the producer and the handler assessment on those watermelons. Any producer who is a handler of watermelons produced by others, would pay the handler assessments on such watermelons handled. Testimony gathered at the hearing of producers who also acted as handlers indicates that paying the full four cent per hundredweight assessment would not impose a financial burden on their businesses. Regardless of the selling price or the variety, the assessment rate on watermelons should not exceed the maximum provided for in the proposed Plan.

Marketing practices for watermelons differ across the United States. Testimony shows that differences depend upon several things: the producer's individual production volume and local marketing traditions; the number and types of handlers operating in an area; and the proximity to major markets outside the producing area. Some producers may utilize two or three different marketing methods during the same crop year. The Board should recommend, subject to approval by the Secretary, rules and regulations concerning the collection of assessments to account for such differences when appropriate.

The record shows that there are two categories of watermelon "brokers" who are involved in the transaction of watermelons between the producer and the marketplace. Witnesses indicated that the "pure" broker simply arranges sale of watermelons between the producer and a buyer. The producer then deals with the buyer, handles the transfer of the watermelons and pays a small fee to the pure broker. In this case, the producer carried out the transaction and benefitted from a delivered price on the watermelons. In such cases, the producer should be considered both a producer and a handler and should pay both the producer and the handler assessments.

A "buying" broker, on the other hand, takes possession of the watermelons, does the invoicing and handling of money and remits payment to the producer. Such a buying broker would be considered a handler and should pay the appropriate handler assessment fee and meet handler recordkeeping requirements of the proposed Plan.

In those cases where producers sell their watermelons by the piece, the weight of watermelons sold should be estimated and assessments paid by the producers and handlers based on that estimate.

If a producer sells watermelons to a sales agent already operating in the market, or auctions them off to an agent at an auction market, then that producer would be responsible for the producer's assessment. The agent purchasing such watermelons would assume the handler responsibilities for collection of the producer's assessment and for paying the handler's assessment fee on those watermelons.

If a group of producers organize a farmers' cooperative to market the group's watermelons, then that cooperative entity should be considered the handler and should pay the handler

assessment fees and abide by all recordkeeping and reporting requirements required of handlers.

Section 1210.341(e) in the Notice of Hearing provided that the Board could authorize other organizations to collect assessments on its behalf. However, the Act provides for collection of assessments by the Board. Accordingly, § 1210.341(e) has been removed from the proposed Plan.

An amendment to the Plan was offered by representatives from the South Carolina Watermelon Association. In testimony they proposed that those States with existing State marketing orders for watermelons be allowed to collect both the producer and handler assessment fees in their States on behalf of the national Board. Such State boards would be paid, or would retain as a collection fee, up to 50 percent of the amount of assessment the State boards could collect. However, this proposed amendment is not consistent with the Act because it would allow for collection agents other than the Board. The South Carolina amendment is therefore denied.

It is possible that violations of the proposed Plan's assessment provisions may occur. The Board should promptly investigate any suspected violations and should report all violations to the Secretary for appropriate action.

The Board may charge: (1) Late payment charges imposed on handlers who are delinquent in paying their assessment fees; and (2) interest charges on such outstanding assessments. Such charges should only be levied on handlers since they are mandated under the Act to be the ones to send both producer and handler assessment fees to the Board. All such funds should be made available to pay Board expenses, and should be subject to the same fiscal, audit and accountability requirements that are placed on assessment funds under the control of the Board. The Board should recommend, subject to the approval of the Secretary, such rates and payment or repayment periods as part of its rules and regulations.

There will be an initial period, when the Board's administrative employees are being hired or when the office is being established. Since assessments may not be collected in time to cover such start-up expenses, according to the record evidence, the Board may: (1) Accept advance payment of assessments from producers and handlers, and (2) borrow money from commercial institutions to pay for initial administrative expenses. Such voluntarily advanced assessment payments from producers and handlers should be based on their best estimates of future quantities to be produced and handled, and should, for accounting purposes, be limited to one season's assessment. These funds should only be used for administrative expenses and should not be used to pay for research, promotion or advertising programs.

All such funds should be subject to the same fiscal, audit and accountability requirements that are placed on assessment funds under the control of the Board. Accepting advanced payment of assessments and borrowing from commercial institutions should not be limited to the first fiscal period of operation of the proposed Plan. However, the Board may not borrow an amount greater than one year's fiscal budget.

The Board should prepare a budget at the beginning of each fiscal period showing estimates of the income and expenditures necessary for the administration of the Plan during that period. Each such budget should be submitted to the Secretary with a written analysis of its components. The record evidence shows that the Board should reimburse the Secretary for administrative costs incurred by the Department for administering the Plan and for the conduct of the referendum.

3(e) Exemptions

Watermelons are usually marketed as fresh fruit. Very little production is sent to the processed market. The Act and the Plan provide for exemption from assessments for all watermelons produced for non-human consumption such as animal feed and seed stocks. The Board may, with the approval of the Secretary, exempt such watermelons from the provisions of the Plan.

It is the responsibility of the Board to ensure that all valid exemption requests are acted on in a timely manner. The Board should establish, as part of its rules and regulations, detailed guidelines on how this exemption procedure would work. In recommending exemption rules and regulations, the Board should ensure that procedures do not unfairly treat or burden those producers entitled to and seeking exemptions. It should be the handler's responsibility to verify the exemption status of all watermelons they handle, and to collect the producer's assessment from any producers of five or more acres who do not have exemptions.

The record indicates that producers should be assessed only on watermelons marketed and not on watermelons that are not harvested. If a producer cannot market a field of watermelons, and therefore plows that field under or opens it up to foraging cattle, those watermelons should not be assessed.

The proposed Plan, as published in the Notice of Hearing, stated that producers of less than five acres of watermelons would be subject to assessments, unless they first applied to the Board for exemption prior to the beginning of the production season. However, the term "producer," as defined by the Act, automatically excludes producers of less than five acres of watermelons. Therefore, watermelon producers of less than five acres are not subject to the Act or the Plan, and are not required to pay assessments under the Plan.

3(f) Refunds

Provisions for making refunds of assessments to producers and handlers who request them should be included in the proposed Plan. The Act provides for refunds to producers and handlers who are not in favor of supporting the research and promotional activities carried out under the Plan. Producers are eligible for a full refund on any quantity of watermelons on which the producer either paid an assessment or had an assessment deducted from the proceeds of sale. Handlers are eligible for a full refund on any quantity of watermelons on which the handler handled and paid assessments.

A refund request should be made to the Board by individual producers and handlers in accordance with regulations and on a form prescribed by the Board. Proof of the producer's or handler's assessment payment should accompany the refund request and should be mailed to the Board. The receipt of sales provided by the handler to the producer should contain sufficient information so that the producer may use it to verify assessments paid and thus qualify for refunds, if so desired.

Rules and regulations recommended by the Board, and approved by the Secretary, should establish procedures for those seeking refunds. The Board should ensure that these procedures are not unduly burdensome. Producers and handlers seeking refunds should be able to easily request necessary forms and complete them with information that is available on sales receipts commonly used in the industry.

In accordance with the Act, a refund request must be made within 90 days of the date of assessment payment. The Board must pay documented refund requests within 60 days of the receipt of the request. The proposed Plan in the Notice of Hearing specified the refund period as 45 days, instead of the 60 days

specified in the Act. The proposed Plan has been changed accordingly.

The proposed Plan mandates that refund applications may be made by any watermelon producer or handler who paid watermelon assessments. A producer may request refunds only for the producer's portion of assessments on any quantity of watermelons. Likewise, a handler may request refunds only for the handler's portion of the assessments. A handler may not make refund applications on behalf of the producers that the handler represents. State associations, cooperatives, or other groups that may represent several watermelon producers may not make joint application for group or corporate refunds on behalf of the producers or handlers that the organizations may represent. Thus, the evidence does not support that portion of the South Carolina representatives' testimony and brief which proposed that its State board apply for and keep one cent per hundredweight of its State's assessments on behalf of all the producers and handlers in the State.

Furthermore, it should be the Board's responsibility to ensure that confidentiality of all refund information is maintained.

3(g) Monetary Reserves

The Board should have the authority to establish an operating monetary reserve and set aside funds in the reserve to defray expenses authorized by the Plan. The purpose of these funds is to add stability to long term program operations by having funds available for periods when actual assessments are lower than the amount projected in the budget. It is also recognized that research and promotion activities in any given year will be financed, at least in part, by funds collected in the previous year. The operating reserve should provide the funds necessary for such financing.

Assessment shortages could be caused by unforseen production failure due to bad weather or to unforseen circumstances. Reserve funds may be used in such emergency situations to carry out promotional and consumer awareness activities that would strengthen watermelons' competitive position in the marketplace.

The Board should include an item in its budget to set aside funds for the operating reserve. In addition, any unexpended funds at the end of the fiscal period should be included in the operating reserve. However, reserves should not be accumulated in excess of approximately two fiscal period budgets, as required by the Act. If the reserve exceeds this amount, even while meeting regular program and administrative costs, the Board should lower the assessment rate until the reserve is again at or below the two fiscal year period.

3(h) Reports and Records

The Board should have the authority, with the approval of the Secretary, to require each handler to submit to the Board such reports and information as the Board may need for the performance of its duties under the Plan. While it is difficult to anticipate every type of report or kind of information the Board may need, there was general agreement in testimony at the hearing that the information should include data on the quantity and dates of watermelons handled, the amount of assessment collected, the names and addresses of the producers involved, including those that claim exemptions. This information can be gathered from invoices, field records, scale tickets, bills of lading or other business records currently used in the industry. Most handlers already provide such data in their receipts to the producers they represent. As part of its rules and regulations, the Board should develop a simple report format that identifies the needed information.

In order for the Board to effectively investigate and verify compliance to this Plan, each handler should be required to maintain, by fiscal period, complete records on that handler's acquisition and disposition of fresh watermelons. Producers who also act as handlers should maintain such records. Such records should be kept for two years beyond the production season, as required by the Act. A two-year period should afford the Board's employees adequate and reasonable time for examination of such records. This requirement should not impose an undue burden on handlers since testimony indicates such records are generally retained for a similar period under current business practices. Record evidence indicates that the Board's staff should have the authority during this period to audit handler books to determine compliance with provisions of the Plan. The Board should report the results of such reviews to the Secretary for necessary action.

The Plan should require that the handlers submit both the producer's assessment and the handler's assessment to the Board. The record indicates that the producer's assessment would, in most instances, be deducted from the purchase price and should be recorded on the sales receipt provided by the handler to the producer.

In cases where a producer is also the handler, the producer acting as a handler would submit the required reports to the Board and would thus be responsible for payment of both the producer's and handler's assessment.

The Board and its employees would have the responsibility for safeguarding the confidentiality of producer and handler records submitted as part of this proposed Plan. Such reports and records would remain confidential and would be disclosed to no person other than the Secretary or persons authorized by the Secretary to review such records unless disclosure is required by law. This restriction is necessary to prevent the disclosure of information that may affect the trade, financial position or business operations of individual producers and first handlers. Under certain circumstances, the release of composite information compiled from reports may be helpful to the Board and the industry in planning operations under the Plan. However, such composite information should not disclose the identities of the persons referred to or their separate business operations.

The Act and the Plan provide that the Secretary may direct publication of the name of any person violating the Plan and the provision or provisions violated by such person.

3(i) Miscellaneous Provisions

The proposed Plan should require the submission to the Secretary for approval of all fiscal matters, programs or projects, rules or regulations, reports or other substantive actions proposed and prepared by the Board. These submissions to the Secretary are necessary and appropriate because the Secretary is charged with oversight of the proposed Plan's administration to assure that it is in accordance with the policies and provisions of the Act.

Board members and employees should not be held personally responsible for honest mistakes or errors of judgment that were unintentionally committed during the time of their service to the Board. However, Board members and employees should be accountable for intentional acts of willful misconduct. The record shows that the Board should report any known, willful misconduct of Board members or employees to the Secretary for appropriate action.

Consistent with the Act, the Plan should prohibit the use of assessment funds to influence government policy or action at any level of government. Funds collected under the Plan may be used in recommending to the Secretary amendments to the proposed Plan. The Board cannot enter into contracts with organizations that engage in efforts to influence government action or policy.

Both the Act and the Plan provide that the Secretary may conduct a national referendum at any time to determine if all known, affected watermelon producers and handlers continue to support the Plan or favor termination of the Plan. The Secretary should hold such a referendum at the request of 10 percent or more of the watermelon producers and handlers. A favorable vote of a majority of those voting and at least 50 percent of the volume of watermelons represented by those voting would be needed to continue the Plan.

The provisions §§ 1210.363 through 1210.367 which involve program suspension, termination, separability, patents and copyrights are usually included in research and promotion programs of this type. The provision concerning patents and copyrights has been modified for clarity and to eliminate unnecessary language. These provisions set forth certain rights, obligations, privileges and procedures that are necessary and appropriate for the effective operation of the proposed Plan. All provisions are incidental to and consistent with the terms and conditions of the Act; and they are necessary to effectuate the other provisions of the proposed Plan. Testimony at the hearing supported these provisions, and they should be included in the proposed Plan.

Miscellaneous changes have been made to the provisions of the proposed Plan for clarity.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed April 20, 1987, as the final date for interested parties to file proposed findings, conclusions, and written arguments or briefs based upon the evidence received at the hearing. At the request of the National Watermelon Association the filing deadline was extended to April 30, 1987, and notice of the extension was published in the **Federal Register** (52 FR 13086, April 21, 1987).

Four briefs were received. Every point in each of the briefs was carefully considered in making the findings and reaching the conclusions set forth in this Recommended Decision. These briefs, proposed findings and conclusions, and the testimony in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that any suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

One brief was from the proponents of the Plan, the National Watermelon Association. It contained clarifications of several provisions that were discussed during the hearing. The brief also included a formal resolution in support of the proposed Plan which was passed unanimously by the Executive Committee of the association.

A second brief was submitted by the South Carolina Watermelon Board. This brief also supported the proposed Plan but advanced several modifications to the proposed Plan. These amendments are noted and discussed in appropriate provisions above.

A brief was received from the Central Valley Watermelon Growers Association, of Lathrop, California, which opposed South Carolina's proposed amendment to permit chartered State watermelon entities to receive a collection fee of up to 50 percent of the assessment fees collected in the State. The association otherwise gives full support to the proposed Plan as it was presented and modified during the hearing.

A final brief was received from the Georgia Watermelon Association, Inc. which expressed support for the proposed Plan as presented and modified during the hearing.

General Findings

Based upon evidence introduced at the hearing, and on the record of the hearing, it is found that:

(1) The proposed Plan, and all of its terms and conditions as now written, will tend to effectuate the declared policy of the Act;

(2) The proposed Plan regulates the marketing of fresh watermelons and watermelon products in the contiguous 48 States in the same manner as proposed in the hearing, and as such, is limited in its application only to the marketing area which is practicable and consistent with carrying out the declared purposes of the Act;

(3) The handling of fresh watermelons and watermelon products as defined in the proposed Plan is in the current of interstate and foreign commerce, or directly burdens, obstructs or affects such commerce, and

(4) The proposed Plan is applicable only to persons in the production of and first handling of watermelons as specified in the Act.

List of Subjects in 7 CFR Part 1210

Watermelon, Agricultural research, Agricultural promotion, Market development.

Recommended Plan

The following Plan is recommended as the detailed means by which the foregoing conclusions may be carried out:

It is proposed that Chapter XI of Title 7 be amended by adding Part 1210 to read as follows:

PART 1210—NATIONAL WATERMELON RESEARCH AND PROMOTION PLAN

Definitions

Sec.

Authority: 7 U.S.C. 4901–4916.

Definitions

§ 1210.30 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any

officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985, (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus popularly referred to as watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Producer.

"Producer" means any person engaged in the growing of five acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of regulation and statute, the term "handler" means the "first" person who performs the handling functions.

§ 1210.309 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12-month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

National Watermelon Promotion Board

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board." The Board shall be composed of producers and handers and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The public representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.
District #2—North Florida including all areas north of State Highway 50.
District #3—The States of Alabama and Georgia.
District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.
District #6—The State of Texas.
District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process should be conducted by the Secretary, the Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States by district entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

(b) Nominations for positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(c) All producers and handlers within the district may participate in the convention: *Provided,* That, if a producer or handler is engaged in the production or handling of watermelons in more than one State, or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(d) The district convention shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the qualifications set forth in the call.

(2) No State in Districts 3, 4, 5 and 7 as currently constituted shall have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention shall have one vote which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports: *Provided,* That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall serve terms as follows: the four producers and four handlers from districts 1 (south Florida) and district 6 (Texas), and the public member shall serve one-year initial terms; four producers and four handlers from district 2 (north Florida) and district 3 (Georgia and Alabama) shall serve two-year initial terms; and the remaining six producers and six handlers from districts 4, 5 and 7 shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms: *Provided,* That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication: *Provided,* That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may

deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public and make available to producers and handlers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or handler;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expandad, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

Expenses and Assessments

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and all watermelons first handled for consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any lot of

watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with § 1647(f), of the Act: *Provided*, That the maximum assessment shall not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than five acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(e) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(f) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(g) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(h) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1210.342 Exemption from assessment.

The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personnally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefore.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1210.350 Reports.

Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(a) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this Plan shall maintain, and during normal business hours make available, for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

Miscellaneous

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing governmental action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production or handling of watermelons and who produced or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers voting in the referendum. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder, or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Signed at Washington, DC, on March 18, 1988.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 88-6422 Filed 3-23-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 45529; Notice No. 88-5]

Uniform System of Accounts and Reports for Large Certificated Air Carriers; Updating the Accounting Provisions for Changes in GAAP

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule solicits comments on certain modifications to the accounting provisions applicable to large certificated air carriers that are contained in Part 241 of the Department's Economic Regulations (14 CFR Part 241). The Department proposes to revise its accounting provisions in accordance with generally accepted accounting principles.This will relieve an air carrier from the burden of maintaining its accounting system so as to differentiate between two sets of principles—generally accepted and regulatory.

DATE: Comments on the proposed rule must be received on or before May 23, 1988.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 45529, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following

statement is made: Comments on Docket No. 45529. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

FOR FURTHER INFORMATION CONTACT:

M. Clay Moritz, Jr. or Jack M. Calloway, Office of Aviation Information Management, DAI-1, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4385 and 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

In adopting Economic Regulation ER-980 (42 FR 19 January 3, 1977), the Civil Aeronautics Board (CAB) announced its intention to reduce the time lag for incorporating generally accepted accounting principles (GAAP) in Part 241, *Uniform System of Accounts and Reports* (USAR) of its Economic Regulations, which applied to certificated air carriers. Prior to ER-980, the air carrier uniform system of accounts (USOA) provisions in Part 241 had been modified, from time to time to include changes in GAAP to assure compatibility of the CAB's accounting requirements with the numerous policy pronouncements being issued by professional organizations and governmental bodies responsible for molding accounting principles and disclosure standards for American business. This action was designed to make it easier for the CAB and the air carriers to maintain a single accounting system, based on generally accepted accounting principles, that could be used for both managerial and regulatory reporting purposes.

Under ER-980, updates of the USOA for changes in GAAP were to be accomplished as expeditiously as possible by appropriate regulatory action, except to the extent such action might be precluded by the CAB's statutory duties. The goal of this policy was to minimize the carrier burden associated with maintaining different accounting records needed to reflect any difference between the USOA and generally accepted accounting principles. As a result, the CAB began issuing periodic rulemaking proposals (and subsequent final rules) to revise the accounting provisions contained in the USAR. Several of these actions were initiated and completed by the CAB between 1977 and 1979.

The Airline Deregulation Act of 1978 (ADA), Pub. L. No. 95-504, caused the CAB to reorder its regulatory agenda to provide for the orderly transition of the airline industry to a deregulated environment and for transfer of the CAB's remaining regulatory functions to the Department of Transportation. This revised agenda effectively suspended the routine use of the regulatory process to modify the USOA for changes in GAAP.

The ADA, as amended by the Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, October 4, 1984, transferred to the Secretary of Transportation the authority of the former Civil Aeronautics Board to prescribe the forms of any and all accounts, records and memoranda to be kept by air carriers. Since the assumption of this authority on January 1, 1985, the Department has been comprehensively reviewing the uniform system of accounting and reporting requirements that are applicable to large certificated air carriers (Part 241 of the Department's Economic Regulations, 14 CFR Part 241) in order to identify what information the Department requires to administer its aviation responsibilities as well as any potential burden reduction areas. "Large certificated air carriers" include all section 401 carriers that either: (1) Operate aircraft designed to have a maximum payload capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds or (2) conduct operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands. To date, the Department has focused its attention on air carrier reporting burden and now turns its attention to the air carrier accounting provisions contained in Part 241.

Need for Uniform Accounting System

Before addressing the issue of a GAAP-based uniform accounting system, the Department conducted a comprehensive policy level review to determine if there was a need for an air carrier uniform accounting system. This review disclosed that a regulatory need does exist which requires the continuation of the USOA to enable the Department to effectively and efficiently administer its mandated aviation responsibilities. These responsibilities include, but are not limited to, the following Departmental programs: air carrier fitness; international fares and rates; international routes; safety surveillance and inspection; and airline industry status evaluations.

Air Carrier Fitness

One component of the initial fitness evaluation that is conducted before a carrier can commence operations is a test of the reasonableness of the applicant's financial operating plan. In analyzing a proposed operating plan, the Department compares the forecasted level of expenses with those of air carriers currently conducting a similar type of operation (average length of haul/same or similar type(s) of aircraft).

In monitoring continuing air carrier fitness the Department uses various balance sheet and profit and loss accounts to determine the financial status of specific air carriers. For example, the specific accounts included in the ratio of current assets to current liabilities (working capital ratio) provide a measurement of the degree of carrier solvency. Other examples of the use of air carrier accounting information include computing carrier net worth and aircraft inventory book value.

International Fares and Rates

The Department is legislatively charged with (1) determining the fair and reasonable rates of compensation to be paid by the United States Postal Service for the transportation of mail by aircraft in both intra-Alaska and foreign services; and (2) establishing and updating the cost-based Standard Foreign Fare Level (SFFL) and Standard Foreign Rate Level (SFRL). SFFL and SFRL form the basis for zones of fare and rate flexibility in international markets. The regulatory process for establishing and updating fares and rates involves significant usage of the system of air carrier accounts in solving equations which detail the precise cost/volume relationships upon which the Department's cost of service methodology and cost updating technique are based. Specific accounts are used to determine amounts of the various operating revenues, operating expenses, cost trends, and in the case of setting mail rates, investments upon which a carrier is entitled to receive a rate of return.

International fares for passengers and rates for cargo and mail are adjusted according to cost trends for each of several designated air carrier operating entities. For example, a passenger fare cost index is calculated for each of four ratemaking entities: Atlantic, Pacific, Latin American and Canadian. It should be noted that financial data from the domestic entity are used to adjust fares and rates for Canadian operations.

Determining the adjustment factor for fares and rates requires the use of the system of accounts to allocate revenues and expenses among the various ratemaking entities as well as calculating the costs of service applicable to each product: Passenger, cargo, and/or mail. The allocation of costs to the products utilizes the functional account classification system contained in Part 241 of the Department's Economic Regulations. Each functional account describes a basic area of financial activity or functional operation of the air carrier. Some examples of functional accounts (activities) are: 5100, "Flying Operations," 5400, "Maintenance," 5500, "Passenger Service," and 6400, "Aircraft and Traffic Servicing." Each function includes those expenses which are incurred in pursuit of the specific financial activity. An example would be the charges to the "Flying Operations" functional account for the salaries recorded in objective account 23, "Pilots and Copilots." Objective accounts are two digit accounts that denote the nature of the specific revenue or expense objective recorded in the functional account. The account numbering system is based on a four digit account; the first two digits identify the functional activity to which the recorded item is related and the second two digits identify the nature (objective) of revenue or cost item. Using the above accounts, account 5123 would be used to record the salaries of pilots and copilots that are charged to "Flying Operations."

This system of accounts has served the former CAB and now the Department well in administering its aviation program responsibilities.

International Routes

The uniform air carrier accounting system facilitates the evaluation of applications for international route authority. This use includes verifying air carrier operating revenue and cost estimates by individual entity as well as cost estimates for each aircraft type proposed for use in providing the service in question. The system of functional accounts allows the analyst to group expenses by functional operation. Thus, aircraft operating expenses can be compared by reviewing the various objective accounts summarized by functional account—Flying Operations (5100), Direct Maintenance (5200), and Depreciation (7000).

Safety Surveillance and Inspection

The Department is responsible for evaluating the adequacy of aviation safety regulations, standards, policies, and procedures; and identifying aviation safety problem areas and recommending/developing appropriate solutions. In order to effectively and efficiently administer this responsibility, the Department has established and used indicators for monitoring the safety of the National Airspace System, including the individual air carriers operating within the system. The Department also has a statutory responsibility to make findings concerning the effects of airline deregulation on safety and submit periodic reports of those findings to Congress.

The Department uses certain specific accounts, in conjunction with a variety of other nonfinancial information, to carry out the above regulatory functions. The accounts are utilized in calculating a set of financial ratios that give an indication of carrier financial status. Taken as a whole, the use of both financial and nonfinancial indicators enables the Department to better allocate its safety inspection resources.

Airline Industry Status Evaluations

One of the functions of this program is to keep senior Departmental officials fully informed as to the status of the airline industry. One phase of this includes analyzing the financial health of the industry. These evaluations require certain accounts reported on the Form 41 financial schedules for use in individual and comparative financial analyses. It should be noted that this program, as well as the overwhelming majority of the Department's aviation programs, requires accounting and statistical data about carrier operations that are reliable and uniform, and comparable from period to period and from carrier to carrier. This is extremely important in the current deregulated environment due to the rapid changes taking place within the industry. The USOA contributes significantly to the level of reliability, uniformity and consistency of the financial data underlying the decision-making process.

Alternatives To Uniform Accounting System

Before concluding that the continuation of the USOA is necessary for administering its aviation programs, the Department did explore possible alternatives to maintaining the current accounting system. Among these alternatives was the elimination of the USOA. This alternative was rejected due to the nature of the aviation programs being administered. As explained above, the Department's aviation programs require a uniform data base that facilitates data comparisons between air carriers on both a current and historical basis.

If the USOA was eliminated, the Department would be forced to develop highly detailed reporting instructions for each and every financial data element reported on the thirteen RSPA Form 41 balance sheet (B) and profit and loss (P) schedules. This would be especially true for describing the reporting of air carrier operating expenses on Form 41 Schedules P-5.2, "Aircraft Operating Expenses," P-6, "Operating Expenses by Objective Groupings," and P-7, "Operating Expenses by Functional Groupings—Group III Air Carriers." These schedules require the extensive use of cost allocations in computing the reportable data elements. The Department believes that establishing, updating and maintaining such a detailed reporting system would be very burdensome for both the Department and the carriers. Every change in accounting standards would normally require a change in reportable data element definitions. These changes could be very voluminous and require a considerable commitment of both Federal and air transportation industry resources to implement.

Changes in the data element definitions would also require the use of time consuming rulemaking procedures to maintain an up-to-date financial reporting system. This alternative would result in a significant increase in the Department's rulemaking workload. Consequently, this alternative would also increase the burden on the air transportation industry by expanding the amount of time the industry must spend to review proposed rules and implement final rules.

USOA and GAAP-Based Accounting

As mentioned above, the CAB, prior to airline deregulation, had established a policy whereby the pronouncements of professional accounting standards setting bodies, such as the Financial Accounting Standards Board, were reviewed and, as appropriate, transformed into a rulemaking proposal to modify the uniform air carrier accounting provisions. With the enactment of the Airline Deregulation Act and the revision of the CAB's regulatory agenda, this policy was effectively suspended. The last rulemaking proceeding that updated the accounting provisions for a change in GAAP was Economic Regulation ER-1076 (43 FR 46295, October 6, 1978), which became effective November 6, 1978. This regulation updated the USOA to be in accordance with generally accepted accounting principles on

troubled debt restructurings, prior period adjustments and forward exchange contracts.

Based on the Department's continued need for uniform air carrier accounting, the USOA has been evaluated to determine if any air carrier burden reductions are possible without adversely affecting the level of uniform, comparative financial information required for decision-making purposes. The Department has concluded that the current level of air carrier burden could be reduced by adopting the concept that the Part 241 accounting provisions will be based on GAAP. It is anticipated that such a system would be beneficial to both the carriers and the Federal government. The carriers would benefit because they would be able to operate accounting systems which yield information acceptable for both financial and governmental reporting purposes. The government would benefit from the degree of comparability of accounting practice among large certificated air carriers.

Given the fact one of the founding principles of deregulation is competition based on free market entry and exit, the Department's experience has shown that the introduction and assimilation of new entrants in the marketplace has been made easier through the beneficial use of the USOA, which has proven to be a useful accounting tool in helping new entrants establish a reliable financial reporting system. This benefit should be further enhanced by a GAAP-based USOA.

Another benefit of GAAP is to reduce the Department's need for on-site accounting classification audits. These audits evaluate the accuracy and reliability of data that are used for regulatory decision-making. A GAAP-based system should save audit time that would otherwise be spent reviewing the application of regulatory accounting provisions that may depart from GAAP.

Alternatives for Updating the USOA for Changes in GAAP

After deciding to propose the adoption of a GAAP-based accounting system, the Department has analyzed several alternative methodologies for updating the accounting provisions for changes in GAAP. To date, all revisions of the accounting provisions have been accomplished through formal rulemaking proceedings. The Department has tentatively determined that the continued use of this approach to GAAP-based accounting may be too burdensome on the affected air carriers and the Federal government. It is estimated, based on prior regulatory proceedings, that the time required to develop and issue a proposed rule, solicit and analyze public comments, and develop and issue a final rule is about eight to twelve months.

The promulgation of a new financial accounting standard normally requires the development of a proposed rule to incorporate the change in Part 241 of the Department's Economic Regulations. Depending on the specific GAAP pronouncement, changes to Part 241 usually include one, several, or all of the following types of changes: (1) Expansion of the definitions or glossary section to include new or revised terminologies, (2) revision and/or expansion of the section containing the accounting provisions, (3) revision of the reporting instructions for each affected Form 41 schedule, and (4) revision of the format of each affected Form 41 schedule. This last element includes changing the graphic composition of each revised schedule as well as printing a supply of the schedule for distribution and inventory.

Economic Regulation ER–1013, adopted by the CAB in July 1977, provides an example of the extent of the modification required to update the USOA for a change in GAAP. This regulation amended the USOA to include certain accounting and disclosure standards for lease transactions that were issued by the Financial Accounting Standards Board (FASB) as Statement of Financial Accounting Standards No. 13 "Accounting for Leases." ER–1013 included nine new definitions, fifteen new accounts, revisions of several existing accounts, a new accounting provisions section, six Form 41 schedules that required revisions to their reporting instructions, and twelve Form 41 schedules that required revisions for changes in graphics.

A review of the current body of generally accepted accounting principles reveals that the FASB has issued, since its 1973 inception, over ninety statements of financial accounting standards. This represents an average promulgation of over six revisions to GAAP each year. The Department is concerned that continuation of this level of activity would severely overburden its staff and cause a substantial reordering of workload priorities as expressed in the Department's Semiannual Regulatory Agenda (52 FR 14548; April 27, 1987).

After considering: (1) The amount of time required to complete a rulemaking proceeding, (2) the volume of FASB statements being issued annually, and (3) the limited staff resources available to process a large volume of rules, the Department decided to consider various alternative methodologies to updating the accounting provisions for changes in GAAP.

One method considered is the initiation of periodic rulemaking proposals. For example, updates could be performed on annual basis so as to include all GAAP revisions that occurred within a given calendar year. This alternative would significantly reduce the total number of rules required to maintain conformity with GAAP. However, a significant drawback with this method is the delay between the effective date of a GAAP pronouncement and the effective date of the USOA revision to reflect the change. Thus, if the FASB issues a Statement of Financial Accounting Standards that is effective early in the 1987 calendar year, the relevant changes may not be included in a notice of proposed rulemaking until some time in 1988, resulting in a delay of about 24 months before the change in GAAP would be incorporated in the Department's uniform accounting provisions. The Department feels this alternative may be significantly burdensome to the carriers who would be required to maintain two accounting systems until the Department made its change. This approach is counter to the purpose of this proposal which is to eliminate the carriers' need for maintaining two accounting systems.

In an attempt to minimize the degree of burden, the Department is proposing to adopt a policy of relying on GAAP, as promulgated by the FASB, as the recognized body of accounting principles for recording air carrier financial information. The Department believes this would be, for the affected air carriers, the most cost effective method of adopting and maintaining a GAAP-based accounting system.

While the Department proposes to base its air carrier accounting requirements on GAAP to the maximum extent possible, it also recognizes the possibility that a situation may arise where a change in GAAP could adversely impact the Department's ability to administer its aviation responsibilities. In this circumstance, the proposed rule provides that the Department's Office of Aviation Information Management would issue an Accounting Directive fully explaining why the application of the accounting principle in question would negatively impact administration of the Department's aviation programs. The directive would also provide the necessary accounting guidance required to maintain the accounting integrity of the USAR.

This methodology would enable the Department to communicate its position on a given accounting principle in a very timely fashion. The Department believes this approach would be the least burdensome to the air carriers since all affected carriers would be informed of the Department's position at the earliest possible moment and thereby spared the burden of implementing any unnecessary accounting system revisions.

While the function of the directive would be to inform the carriers of the Department's accounting provision requirements, the Department recognizes the fact there may be some objection to its decision not to implement a particular accounting principle. If significant objections are raised by any concerned party or parties, the Department plans to address such objections in the public forum by issuing a notice of proposed rulemaking. Air carriers and any other concerned parties would be encouraged to submit their views and comments on the issues raised. After due deliberation of all comments received, the Department would issue a final rule, stating its conclusions.

Proposed Changes to Part 241

In order to more closely align the current air carrier accounting system with GAAP and to place a greater reliance on GAAP for the recording of financial information, the Department proposes to revise Part 241 as follows:

Definitions

Section 03 of Part 241 contains a list of definitions that define terms that are used in the remaining sections of the part. Certain of these definitions have been tentatively identified as being either already defined by GAAP or no longer required in the current air transportation environment. These definitions, which are being proposed for elimination, include: Air Carrier, Route; Air Transportation, Supplemental; Exposed Net Asset Position; Exposed Net Liability Position; Express; Foreign Currency Transactions; Foreign Currency Translation; Forward Exchange Contract (Forward Contract); Interest Rate Implicit in the Lease; Lease, Capital; Lease, Direct Financing; Lease, Leveraged; Lease, Operating; Lease, Sales-Type; Lessee's Incremental Borrowing Rate; Marketable (as Applied to an Equity Security); Market Price; Market Value (Equity Security); Minimum Lease Payments; Net Unrealized Gain or Loss, Marketable Equity Securities Portfolio; Realized Gain or Loss, Marketable Equity Security; Schedule, Published; Service, Irregular (Excluding Charter and Special); Service, Special; Service, Tourist; Stop, Fuel; and Valuation Allowance, Marketable Equity Securities Portfolio.

The following definitions would be editorially revised to enhance clarity and eliminate incorrect references: Agent, Cargo; Air Carrier, Charter; Airport-to-Airport Distance; Certificate of Public Convenience and Necessity; Flight, Developmental; Freight; Mail, Nonpriority; Mail, Priority; Person Controlling an Air Carrier; Route, Certificated; Section 418 Cargo Operations; Service, Charter; Service, Mixed; Service, Nonscheduled; Stop, Flag; Tariff, Published; Traffic, Enplaned; Traffic, Deplaned; and Weight, Passenger.

The following definitions are proposed for inclusion in Section 03: "Department" and "DOT."

General Accounting Provisions

The Department has tentatively identified the following sections as not relevant or no longer being required since the accounting policies related to each of the subject headings are already covered by GAAP pronouncements.

1. 1–9, Conversion to This System of Accounts and Reports
2. 2–3, Foreign Currency Transactions
3. 2–5, Liability Accruals
4. 2–6, Income Tax Accruals
5. 2–7, Extraordinary Items, Discontinued Operations, Prior Period Adjustments and Accounting Changes
6. 2–8, Unaudited Items
7. 2–9, Improvements, Additions and Betterments
8. 2–10, Capitalization of Interest
9. 2–11, Accounting for Transactions in Gross Amounts
10. 2–12, Acquisition and Valuation of Assets
11. 2–13, Establishment of Allowances
12. 2–14, Depreciation and Amortization
13. 2–15, Contingent Assets and Contingent Liabilities
14. 2–16, Notes to Financial Statements
15. 2–18, Transactions Between Members of an Affiliated Group
16. 2–20, Accounting for Leases
17. 2–21, Accounting for Troubled Debt Restructurings
18. 5–1, Current Assets
19. 5–2, Investments and Special Funds
20. 5–3, Property and Equipment
21. 5–4, Property and Equipment Depreciation
22. 5–5, Other Assets
23. 5–6, Current Liabilities
24. 5–7, Noncurrent Liabilities
25. 5–8, Deferred Credits and Commitments and Contingent Liabilities
26. 5–9, Stockholders' Equity

Balance Sheet Accounts

The Department has tentatively decided to eliminate the following balance sheet accounts because each of the following accounts has either already been eliminated from the applicable Form 41 schedule or represents an account that is no longer required.

1. 2860, Subscribed and Unissued Stock
2. 2950, Net Unrealized Loss on Noncurrent Marketable Equity Securities

Profit and Loss Accounts

The following accounts are proposed for elimination. These accounts were tentatively identified as being no longer required.

1. 15, Mutual Aid
2. 15.1, Mutual Aid Receipts
3. 15.2, Mutual Aid Payments

Department Regulatory Policies and Procedures

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291a, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would result in a reduction in reporting burden for large certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy

categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. The proposed amendments would affect only large certificated air carriers.

The accounting requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements will be submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the accounting requirements to OMB. Comments should be directed to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. It would be appreciated if a copy of any comments sent to OMB is also sent to the DOT rules docket. It is anticipated that this rule would result in a 400-hour reduction in the Department's fiscal year 1988 Information Collection Budget for OMB No. 2138-0013, Report of Financial and Operating Statistics for Large Certificated Air Carriers.

List of Subjects in 14 CFR Part 241

Air carriers and Uniform System of Accounts and Reports.

Proposed Rule

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers*, as follows:

PART 241—[AMENDED]

1. The authority for Part 241 would continue to read as follows:

Authority: Sections 204, 401, 407, 416, 417, 901, 902, 1002 of the Federal Aviation Act of 1958, as amended: 49 U.S.C. 106, 1324, 1371, 1377, 1386, 1387, 1471, 1472 and 1482.

2. The Table of Contents of the Uniform System of Accounts and Reports for Large Certificated Air Carriers would be amended by:

A. Removing sections 1-9, 2-5, 2-6, 2-7, 2-8, 2-9, 2-10, 2-11, 2-12, 2-13, 2-~~14~~, 2-15, 2-16, 2-17, 2-18, 2-19, 2-20, 2-21, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 5-8 and 5-9.

B. Revising the title of Section 2-3 to read:

Sec. 2-3 Revenue and accounting practices.

C. Removing and reserving the title of Section 5, *Balance Sheet Account Groupings.*

3. Section 03, *Definitions for Purposes of This System of Accounts and Reports*, would be amended by:

A. Removing the definitions of Air Carrier, Route; Air Transportation, Supplemental; Exposed Net Asset Position; Exposed Net Liability Position; Express; Foreign Currency Transactions; Foreign Currency Translation; Forward Exchange Contract (Forward Contract); Interest Rate Implicit in the Lease; Lease, Capital; Lease, Direct Financing; Lease, Leveraged; Lease, Operating; Lease, Sales-Type; Lessee's Incremental Borrowing Rate; Marketable (as Applied to an Equity Security); Market Price; Market Value (Equity Security); Minimum Lease Payments; Net Unrealized Gain or Loss, Marketable Equity Securities Portfolio; Realized Gain or Loss, Marketable Equity Security; Schedule, Published; Service, Irregular (Excluding Charter and Special); Service, Special; Service, Tourist; Stop, Fuel; and Valuation Allowance, Marketable Equity Securities Portfolio.

B. Revising the definitions of Agent, Cargo; Air Carrier, Charter; Airport-to-Airport Distance; Certificate of Public Convenience and Necessity; Flight, Developmental; Freight; Mail, Nonpriority; Mail, Priority; Person Controlling an Air Carrier; Route, Certificated; Section 418 Cargo Operations; Service, Charter; Service, Mixed; Service, Nonscheduled; Stop, Flag; Tariff, Published; Traffic, Enplaned; Traffic, Deplaned; and Weight, Passenger; and adding new definitions Department and DOT to read:

* * * * *

Agent, cargo. Any person (other than the air carrier performing the direct air transportation or one of its bona fide regular employees or an indirect air carrier lawfully engaged in air transportation under authority conferred by any applicable part of the Economic Regulations of the Department) who for compensation or profit: (1) Solicits, obtains, receives or furnishes directly or indirectly property or consolidated shipments of property for transportation upon the aircraft of an air carrier subject to this part, or (2) procures or arranges for air transportation of property upon aircraft of an air carrier subject to this part by charter, lease, or any other arrangement.

* * * * *

Air carrier, charter. An air carrier holding a certificate issued under section 401(d)(3) of the Federal Aviation Act of 1958, as amended.

* * * * *

Airport-to-airport distance. The great circle distance, measured in statute miles, between airports as compiled by the Department's Office of Aviation Information Management, RSPA.

* * * * *

Certificate of Public Convenience and Necessity. A certificate issued to an air carrier under section 401, of the Act, by the Department of Transportation authorizing the carrier to engage in air transportation.

* * * * *

Department. Department of Transportation.

* * * * *

DOT. Department of Transportation.

* * * * *

Flight, developmental. A flight for (1) the development of a new route either prior or subsequent to certification by the Department of Transportation; (2) the extension of an existing route; and (3) the integration of a new type of aircraft or service.

* * * * *

Freight. Property transported by air.

* * * * *

Mail, nonpriority. All mail for which transportation by air is provided on a space available basis.

Mail, priority. All mail for which transportation by air is provided on a priority basis.

* * * * *

Person controlling an air carrier. Any person, as defined in section 101 (32) of the Act, whom the Department has found, in any proceeding, to control an air carrier, or who holds, directly or indirectly, the legal or beneficial ownership of more than 50 percent of the outstanding voting capital stock or capital of an air carrier, and who does not make a proper showing to the Department that he or she does not control the carrier despite such stock ownership, shall be deemed to be a person controlling the carrier for the purpose of this part. A brokerage firm which holds record ownership of securities merely for the convenience of the customer beneficially owning the stock shall not be deemed a person controlling.

* * * * *

Route, certificated. The route(s) over which an air carrier is authorized to provide air transportation by a Certificate of Public Convenience and Necessity issued by the Department of Transportation pursuant to section 401(d)(1) or (2) of the Act.

* * * * *

Section 418 cargo operations. The carriage, pursuant to section 418 of the

Act, by aircraft of property and/or mail as a common carrier for compensation or hire in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico, or the U.S. Virgin Islands. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

* * * * *

Service, charter. Nonscheduled air transport service in which the party receiving transportation obtains exclusive use of an agreed upon portion of the total capacity of an aircraft with the remuneration paid by the party receiving transportation accruing directly to, and the responsibility for providing transportation is that of, the accounting air carrier.

* * * * *

Service, mixed. Transport service for the carriage of both first-class and coach passengers on the same aircraft.

* * * * *

Service, nonscheduled. Includes transport service between points not covered by Certificates of Public Convenience and Necessity issued by the Department of Transportation to the air carrier; services pursuant to the charter or hiring of aircraft; other revenue services not constituting an integral part of the services performed pursuant to published schedules; and related nonrevenue flights.

* * * * *

Stop, flag. A point on an air carrier's operating system that is scheduled to be served only when traffic is to be picked up or discharged.

* * * * *

Tariff, published. A publication containing fares and rates applicable to the transportation of persons or cargo and rules relating to or affecting such fares or rates of transportation, filed with the Department of Transportation.

* * * * *

Traffic, deplaned. A count of the number of passengers getting off and tons of cargo unloaded from an aircraft. For this purpose, passengers and cargo on aircraft leaving a carrier's system on interchange flights are considered as deplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as deplaning at the junction point.

Traffic, enplaned. A count of the number of passengers boarding and tons of cargo loaded on an aircraft. For this purpose, passengers and cargo on aircraft entering a carrier's system on interchange flights are considered as enplaning at the interchange point; and passengers and cargo moving from one operation to another operation of the same carrier, for which separate reports are required by the Department of Transportation, are considered as enplaning at the junction point.

* * * * *

Weight, passenger. For the purposes of this part, a standard weight of 200 pounds per passenger (including all baggage) is used for all civil operations and classes of service. Other weights may be prescribed in specific instances upon the initiative of the Department of Transportation or upon a factually supported request by an air carrier.

4. Section 1, *Introduction to System of Accounts and Reports,* would be amended by eliminating Section 1–9, *Conversion to This System of Accounts and Reports;* and revising Section 1–7 and 1–8 to read:

Sec. 1–7 Interpretation of accounts.

To the end that uniform accounting may be maintained, questions involving matters of accounting significance which are not clearly provided for should be submitted to the Director, Office of Aviation Information Management, Research and Special Programs Administration, for explanation, interpretation, or resolution.

Sec. 1–8 Address for reports and correspondence.

All reports required under this part and related correspondence shall be addressed to: Office of Aviation Information Management, DAI–1, Room 4125, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

5. Section 2, *General Accounting Policies,* would be amended by:

A. Removing Sections 2–3, *Foreign Currency Transactions;* 2–5, *Liability Accruals;* 2–6, *Income Tax Accruals;* 2–7, *Extraordinary Items, Discontinued Operations, Prior Period Adjustments and Accounting changes;* 2–8, *Unaudited Items;* 2–9, *Improvements, Additions and Betterments;* 2–10, *Capitalization of Interest;* 2–11, *Accounting for Transactions in Gross Amounts;* 2–12, *Acquisition and Valuation of Assets;* 2–13, *Establishment of Allowances;* 2–14, *Depreciation and Amortization;* 2–15, *Contingent Assets and Contingent Liabilities;* 2–16, *Notes to Financial Statements;* 2–18, *Transactions Between Members of an Affiliated Group;* 2–19, *[Reserved];* 2–20, *Accounting for Leases;* and 2–21, *Accounting for Troubled Debt Restructurings.*

Section 2–17 [Redesignated as Section 2–3]

B. Redesignating section 2–17 as section 2–3.

6. Section 4, *General,* would be amended by revising paragraph (b) to read:

(a) * * *

(b) The balance sheet accounts prescribed in this system of accounts for each air carrier group are set forth in Section 3, Chart of Balance Sheet Accounts. The balance sheet elements to be included in each account are presented in section 6.

7. Section 5, *Balance Sheet Account Groupings,* in its entirety, would be removed and reserved.

8. Section 6, *Objective Classification of Balance Sheet Elements,* would be amended by:

A. Revising the description of accounts 1510.1, 1510.2 and 1530 to read:

1510.1 Investments in Investor Controlled Companies.

Record here the cost of investments in investor controlled companies except that permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net. This account shall also include the equity in undistributed earnings or losses since acquisition. In the event dividends are declared by such companies, the air carrier shall credit this account for its share in dividends declared and debit balance sheet account 1270 Accounts Receivable. This account shall separately state: (a) The cost of such investments at date of acquisition and (b) the equity in undistributed earnings or losses since acquisition.

1510.2 Investments in Other Associated Companies.

Record here the cost of investments in associated companies other than investor controlled companies. Cost shall represent the amount paid at the date of acquisition without regard to subsequent changes in the net assets through earnings or losses of such associated companies. However, permanent impairment in the value of securities may be reflected through charges to profit and loss classification 8100, Nonoperating Income or Expense—Net.

1510.3

* * * * *

1530 Other Investments and Receivables.

Record here notes and accounts receivable not due within one year, investments in securities issued by others, investments in leveraged leases, the noncurrent net investment in direct financing and sales-type leases, and the allowance for unrealized gain or loss on noncurrent marketable equity securities. Securities held as temporary cash investments shall not be included in this account but in balance sheet account 1100 Short-Term Investments. Investments in and receivables from associated companies which are not settled currently shall be included in balance sheet account 1510 Investments in Associated Companies.

B. Inserting a paragraph immediately following the center heading, *Operating Property and Equipment* to read:

Operating Property and Equipment

"Operating Property and Equipment" shall encompass items used in air transportation services and services related thereto.

C. Revising paragraph (a) of account 1601 to read:

1601 Airframes.

(a) Record here the total cost to the air carrier of airframes of all types and classes together with the full complement of instruments, appurtenances and fixtures comprising complete airframes including accessories necessary to the installation of engines and flight control and transmission systems, except as specifically provided otherwise in accounts 1602 and 1607. Also record here in separate subaccounts the costs of airframe overhauls accounted for on a deferral and amortization basis.

* * * * *

D. Revising paragraph (a) of account 1602 to read:

1602 Aircraft Engines.

(a) Record here the total cost to the air carrier of complete units of aircraft engines of all types and classes together with a full complement of accessories, appurtenances, parts and fixtures comprising fully assembled engines as delivered by the engine manufacturer ready for operation in test but without the accessories necessary to its installation in airframes. Also record here in separate subaccounts the costs of aircraft engine overhauls accounted for on a deferral and amortization basis.

* * * * *

E. Revising the description of account 1607 to read:

1607 Improvements to Leased Flight Equipment.

Record here the total cost to the air carrier incurred in connection with modification, conversion or other improvements to leased flight equipment. Also record here, in separate subaccounts, the costs of airframe and aircraft engine overhauls of leased aircraft accounted for on a deferral and amortization basis.

F. Revising paragraph (a) of account 1608 to read:

1608 Flight Equipment Rotable Parts and Assemblies.

(a) Record here the total cost to the air carrier of all spare instruments, parts, appurtenances and subassemblies related to the primary components of flight equipment units provided for in balance sheet accounts 1601 through 1607, inclusive. This account shall include all parts and assemblies of material value which are rotable in nature, are generally reserviced or repaired, are used repeatedly and possess a service life approximating that of the property type to which they relate. Items of an expendable nature which generally may not be repaired and reused, shall not be recorded in this account but in account 1300 Spare Parts and Supplies. Except for recurrent service sales, flight equipment parts recorded in this account shall not be charged to operating expense as retired. Profit or loss on sales of parts as a routine service to others shall be included in profit and loss account 14 General Service Sales, and parts sold shall be removed from this account at full cost irrespective of any allowance for depreciation which has been provided.

* * * * *

G. Revising paragraph (a) and the note following paragraph (b) of account 1629 to read:

1629 Flight Equipment Airworthiness Allowances.

(a) Record here accumulated provisions for overhauls of flight equipment.

(b) * * *

Note: At the option of the air carrier, the number "2629" may be assigned to this account for accounting purposes. However, for purposes of reporting on RSPA Form 41, the balance in this account shall be reported under account "1629."

H. Revising paragraphs (a) through (h) of account 1630 to read:

1630 Equipment.

* * * * *

(a) Equipment assigned to aircraft or active line operations as opposed to items held in stock for servicing passengers such as broilers, bottleware, dishes, food boxes, thermos jugs, blankets, first aid kits, etc. Spare items shall be carried in balance sheet account 1300 Spare Parts and Supplies and shall be charged directly to expense upon withdrawal from stock for replacing original complements.

(b) Equipment used in restaurants and kitchens.

(c) Equipment of all types and classes used in enplaning and handling traffic and in handling aircraft while on ramps, including motorized vehicles used in ramp service. Classes of equipment used interchangeably between handling aircraft on ramps and in maintaining aircraft may be classified in accordance with normal predominant use.

(d) Nonairborne equipment of all types and classes used in meteorological and communication services which is not a part of buildings.

(e) Equipment of all types and classes including motorized vehicles used in engineering and drafting services and in maintaining, overhauling, repairing and testing other classes of property and equipment.

(f) Property and equipment of all types and classes used in ground and marine transportation services.

(g) Property and equipment of all types and classes used in storing and distributing fuel, oil and water, such as fueling trucks, tanks, pipelines, etc.

(h) All other ground equipment of all types and classes such as medical, photographic, employees' training equipment, and airport and airway lighting equipment.

I. Revising the description of account 1636, 1640 and 1679 to read:

1636 Furniture, Fixtures, and Office Equipment.

Record here the total cost to the air carrier of furniture, fixtures and office equipment of all types and classes wherever used or located.

* * * * *

1640 Buildings.

Record here the total cost to the air carrier of owned buildings, structures and equipment and related improvements. Each air carrier shall maintain the following subaccounts in which the values fairly assignable to maintenance and other operations shall be separately recorded:

1640.1 Maintenance Buildings and Improvements.

1640.9 Other Buildings and Improvements.

* * * * *

1679 Land.

Record here the initial cost and the cost of improving land.

J. Revising paragraph (a) of account 1689 to read:

1689 Construction Work in Progress.

(a) Record here all direct and indirect costs of the air carrier that are expended for constructing and readying property and equipment of all types and classes for installation in operations. The amount reported shall reflect all such expenses that are accumulated to the balance sheet date. Where properly includable in the property and equipment classification, record here also the accumulated costs for uncompleted overhauls of airframes, aircraft engines, or other material units of property.

* * * * *

K. Revising paragraph (a) of account 1695 to read:

1695 Leased Property Under Capital Leases.

(a) Record here the total cost to the air carrier for all property obtained under capital leases.

* * * * *

L. Revising paragraph (a) of account 1696 to read:

1696 Leased Property Under Capital Leases—Accumulated Amortization.

(a) Record here accruals for amortization of leased property obtained under capital leases.

* * * * *

M. Adding a paragraph after the center heading *Nonoperating Property and Equipment* to read:

Nonoperating Property and Equipment

"Nonoperating Property and Equipment" shall encompass investments in property and equipment not separately accounted for within a nontransport division but assigned to other than air transportation and transport-related services, and property and equipment held for future use.

N. Revising the description of accounts 1797, 1798 and 2080 to read:

1797 Property on Operating-type Lease to Others and Property Held for Lease.

Record here the total cost to the air carrier of property on operating-type lease to others and property held for lease.

1798 Property on Operating-type Lease to Others and Property Held for Lease—Accumulated Depreciation.

Record here accruals for depreciation of property on operating-type leases to others and property held for lease.

2080 Current Obligations Under Capital Leases.

Record here the total current liability applicable to property obtained under capital leases.

O. Revising paragraph (b) of account 2120 to read:

2120 Accrued Vacation Liability.

* * * * *

(b) This account shall be credited and the applicable personnel compensation expense account concurrently charged with the cost of any lag between vacations accrued and vacations taken. Accruals may be based upon standard rates of lag, if such standard rates are verified by physical inventory and adjusted accordingly at least once each calendar year. Adjustments of balances in this account shall be cleared to applicable compensation expense accounts.

P. Revising the description of accounts 2130, 2210, 2280, 2340 and 2345 to read:

2130 Accrued Taxes.

(a) Record here accruals for currently payable income and other forms of taxes which constitute a charge borne by the air carrier as opposed to those collected as an agent for others.

(b) Each air carrier shall disclose in the footnotes of its RSPA Form 41 for each calendar quarter whether utilized credits are accounted for by the flow-through method or the deferred method. The method selected shall be consistently followed by the carrier.

2210 Long-Term Debt.

(a) Record here the face value of principal amount of debt securities issued or assumed by the air carrier and held by other than associated companies, which has not been retired or cancelled and is not payable within 12 months of the balance sheet date.

(b) In cases where debt coming due within 12 months is to be refunded, or where payment is to be made from assets of a type not properly classifiable as current, the amount payable shall not be removed from this account. In addition, this account shall include short-term debt obligations when both the intent to refinance the short-term obligations on a long-term basis is established and the ability to consummate this refinancing can be demonstrated.

2280 Noncurrent Obligations Under Capital Leases.

Record here the total noncurrent liability applicable to property obtained under capital leases.

2340 Deferred Income Taxes.

Record here credits and debits representing the net tax effect of material timing differences originating and reversing in the current accounting period, giving appropriate recognition to the portion of investment tax credits which would have been allowed if taxes were based on pretax accounting income by a reduction of the deferred tax provision.

2345 Deferred Investment Tax Credits.

Record here investment tax credits utilized as reduction of tax liabilities, when the carrier exercises the option to defer such credits for amortization over the service life of the related equipment.

2860 and 2950 [Removed].

Q. Removing accounts 2860, *Subscribed and Unissued Stock*, and 2950, *Net Unrealized Loss on Non-current Marketing Equity Securities*.

R. Revising paragraph (a) of account 2990 to read:

2990 Treasury Stock.

(a) Record here the cost of capital stock issued by the air carrier reacquired by it and not retired or canceled.

* * * * *

9. Section 7, *Chart of Profit and Loss Accounts*, would be amended by removing accounts 15, *Mutual Aid;* 15.1, *Receipts;* and 15.2, *Payments*.

10. Section 8, *General*, would be amended by revising paragraphs (d)(1)(i), (d)(2)(i), (d)(5), (d)(6), and (d)(7) to read:

* * * * *

(d) * * *

(1) *Operating revenues.* (i) This primary classification shall include revenues of a character usually and ordinarily derived from the performance of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurrent nature applicable to services performed in prior accounting years.

(ii) * * *

(2) *Operating expenses.* (i) This primary classification shall include expenses of a character usually and ordinarily incurred in the performance

of air transportation and air transportation-related services, which relate to services performed during the current accounting year, and adjustments of a recurring nature attributable to services performed in prior accounting years.

* * * * *

(5) *Discontinued operations.* This primary classification (9600) shall include earnings and losses of discontinued nontransport operations and gains or losses from the disposal of nontransport operations the result of which are customarily accounted for through profit and loss objective accounts 86, 87 and 88.2.

(6) *Extraordinary items.* This primary classification (9700) shall include material items characterized by their unusual nature and infrequent occurrence.

(7) *Cumulative effect of changes in accounting principles.* This primary classification (9800) shall include the cumulative effect of material changes in accounting principles.

11. Section 10, *Functional Classification—Operating Expenses of Group I Air Carriers,* would be amended by:

A. Revising Paragraph (c) of account 5300 to read:

5300 Maintenance Burden.

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenance burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual cost incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. By revising the description of account 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases and other intangible assets applicable to the performance of air transportation. (See sections 6–1696, 1830 and 1890.)

12. Section 11, *Functional Classification—Operating Expenses of Group II and Group III Air Carriers,* would be amended by:

A. Revising paragraph (c) of account 5300 to read:

5300 Maintenance Burden.

* * * * *

c. This subfunction shall include only those expenses attributable to the current air transport operations of the air carrier. Maintenace burden associated with capital projects of the air carrier, other than overhauls of airframes and aircraft engines shall be allocated to such projects. Maintenance burden incurred in common with services to other companies and operating entities shall be allocated to such services on a pro rata basis unless the services are so infrequent in performance or small in volume as to result in no appreciable demands upon the air carrier's maintenance facilities. When overhauls of airframes or aircraft engines are as a consistent practice accounted for on an accrual basis instead of being expensed directly, maintenance burden shall be allocated to such overhauls on a pro rata basis. Standard burden rates may be employed for quarterly allocations of maintenance burden provided the rates are reviewed at the close of each calendar year. When the actual burden rate for the year differs materially from the standard burden rate applied, adjustment shall be made to reflect the actual costs incurred for the full accounting year. Allocations of maintenance burden to capital projects, and service sales to others shall be effected through the individual maintenance burden objective accounts, except that the air carrier may effect such allocations by credits to profit and loss account 77 Uncleared Expense Credits under such circumstances in which the use of that account will not undermine the significance of the individual maintenance burden objective accounts in terms of the expense levels associated with the air carrier's air transport services. Maintenance burden allocated to overhauls shall be credited to profit and loss subaccounts 5372.1 or 5372.6 Airworthiness Allowance Provisions.

B. By revising the description of account 7000 to read:

7000 Depreciation and Amortization.

This function shall include all charges to expense to record losses suffered through current exhaustion of the serviceability of property and equipment due to wear and tear from use and the action of time and the elements, which are not replaced by current repairs, as well as losses in serviceability occasioned by obsolescence, supersession, discoveries, change in popular demand or action by public authority. It shall also include charges for the amortization of capitalized developmental and preoperating costs, leased property under capital leases, and other intangible assets applicable to the performance of air transportation. (See section 6–1696, 1830 and 1890.)

13. Section 12, *Objective Classification—Operating Revenues and Expenses,* would be amended by:

A. Revising paragraphs (a) and (c) of account 05 to read:

05 Mail.

(a) Record here revenue from the transportation by air of both United States and foreign mail.

* * * * *

(c) This account shall be subdivided as follows by all air carrier groups:

05.1 Priority.

Record here revenue from United States mail for which transportation by air is provided on a priority basis.

05.2 Nonpriority.

Record here revenue from United States mail for which transportation by air is provided on a space available basis.

05.3 Foreign.

Record here revenue from the transportation by air of mail other than United States mail.

B. Revising the description of account 08 to read:

08 Public Service Revenues (Subsidy).

Record here amounts of compensation received pursuant to the provisions of section 419 of the Federal Aviation Act under rates established by the Department of Transportation for the provision of essential air service to small communities.

C. Removing the account title and description of account 15, *Mutual Aid.*

D. Revising paragraph (a) of account 39 to read:

39 Traffic Commissions.

(a) Record here charges by others, including associated companies, for commissions arising from sales of transportation. Commissions, fees or other charges incurred for general agency services, as opposed to commissions arising from sales of transportation, shall not be included in this account but in profit and loss account 43 General Services Purchased.

* * * * *

E. Revising the description of account 58 to read:

58 Injuries, Loss and Damage.

Record here the remainder of gains, losses or costs resulting from accidents, casualties or mishandlings, after offsetting insurance recoveries, as accumulated until finally determined in balance sheet account 1890 Other Assets and Deferred Charges. This account shall not include gains or losses from retirement of property and equipment resulting from casualties. Such gains or losses shall be recorded in appropriate capital gains or losses accounts.

F. Revising the description of account 61 to read:

61 Foreign Exchange Gains and Losses.

Record here gains or losses from transactions involving currency translations resulting from normal, routine, current fluctuations in rates of foreign exchange. Gains or losses of a nonroutine abnormal character and gains or losses which arise from long-term debt principal and interest transactions shall not be entered in this account but in profit and loss account 85, Foreign Exchange Gains and Losses.

G. Revising paragraph (b) of account 74 to read:

74 Amortization.

* * * * *

(b) This account shall be subdivided as follows by all air carrier groups:

74.1 Developmental and Preoperating Expenses.

Record here amortization of the cost of projects carried in balance sheet account 1830 Unamortized Developmental and Preoperating Costs.

74.2 Other Intangibles.

Record here amortization of the cost of intangibles not provided for otherwise.

14. Section 14, *Objective Classification—Nonoperating Income and Expense,* would be amended by revising the description of accounts 83.1, 83.2, 83.3, 83.4, 85, 88.1, 88.3, 88.4 and 89.1 to read:

* * * * *

83.1 Imputed Interest Capitalized—Credit

Record here credits related to imputed interest capitalized and recorded in asset accounts.

83.2 Imputed Interest Deferred—Debit.

Record here debits related to imputed interest deferred in balance sheet account 2390, Other deferred credits.

83.3 Imputed Interest Deferred—Credit.

Record here periodic credits for imputed interest, cleared to this account as the amount of such interest in the asset accounts is amortized.

83.4 Interest Capitalized—Credit.

Record here interest which is capitalized and recorded in asset accounts.

* * * * *

85 Foreign Exchange Gains and Losses.

Record here gains and losses from transactions involving currency translations resulting from nonroutine abnormal changes in rates of foreign exchange and gains or losses which arise from translations of long-term debt principal and interest transactions.

* * * * *

88.1 Intercompany Transaction Adjustment—Credit.

Record here all intercompany credits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

* * * * *

88.3 Net Unrealized Gain or Loss on Marketable Equity Securities.

Record here the net unrealized gain or loss on the valuation of marketable equity securities.

88.4 Net Realized Gain or Loss on Marketable Equity Securities.

Record here the net realized gain or loss on the valuation of marketable equity securities.

* * * * *

89.1 Intercompany Transaction Adjustment—Debit.

Record here all intercompany debits for any differences between amounts at which transactions between the air carrier and its nontransport divisions or associated companies are initially recorded and are to be settled.

* * * * *

15. Section 15, *Objective Classification—Income Taxes for Current Period,* would be amended by revising the description of account 91 to read:

91 Provision for Income Taxes.

(a) Record here quarterly provisions for accruals of Federal, State, local, and foreign taxes based upon net income, computed at the normal tax and surtax rates in effect during the current accounting year. In general, this account shall reflect provisions within each period for currently accruing tax liabilities as actually or constructively computed on tax returns, and any subsequent adjustments. This account shall include credits for refund claims arising from the carryback of losses in the year in which the loss occurs, credits for the carry-forward of losses in the year to which the loss is carried, and investment tax credits in the year in which each credit is utilized to reduce the liability for income taxes.

(b) Income taxes shall be allocated among the transport entities of the air carrier, its nontransport divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by an air carrier and other members of an affiliated group, the income tax expense to be recorded by the air carrier shall be the same as would result if determined for the air carrier separately for all time periods, except that the tax effect of carryback and carryforward operating losses, investment tax credits, or other tax credits generated by operations of the air carrier shall be recorded by the air carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group. Any difference between the income tax so recorded and

the amount at which settlement is to be made shall be recorded in subaccount 88.1 Intercompany Transaction Adjustment—Credit or in subaccount 89.1 Intercompany Transaction Adjustment—Debit, as is appropriate.

(c) This account shall be subdivided as follows by all carrier groups:

91.1 Income Taxes Before Investment Tax Credits.

Record here accruals of income taxes based upon taxable income of the period.

91.2 Investment Tax Credits Utilized.

Record here investment tax credits utilized to reduce the accrued liability for income taxes.

16. Section 17, *Objective Classification—Extraordinary Items,* would be amended by revising the description of account 96 to read:

96 Extraordinary Items.

Record here material items characterized by their unusual nature and infrequent occurrence. Events or transactions which are material and either unusual or nonrecurring, but not both, shall not be recorded in this account but should be disclosed on RSPA Form 41 Schedule P–2 and identified both as to their nature and financial effects.

SECTION 24—[AMENDED]

17. Section 24, *Profit and Loss Elements,* would be amended by:

A. Revising the title and paragraph (e), and removing paragraphs (f) through (p) to Schedule P–2 to read:

Schedule P–2—Notes to RSPA Form 41 Report

* * * * *

(e) Each scheduled air carrier shall include on this schedule a description of each interruption in air transport operations, the aggregate effect of which is ten (10) percent or more of the scheduled revenue plane-miles which, except for the interruption, would have been operated during the month or either of 2 consecutive months affected. The information to be reported for each such interruption in operations shall consist of:

(1) For the report period in which partial or complete interruption first occurs, the nature of the interruption and dates of partial and/or complete cessation of operations, as applicable; (2) for each report period until full resumption of operations, an estimate of the revenue plane-miles canceled in each month of the quarter because of the interruption; and (3) for the report period in which scheduled operations are resumed, dates of partial and/or complete resumption, as applicable.

B. Revising paragraph (f) of Schedule P–5.2 to read:

Schedule P–5.2—Aircraft Operating Expenses

* * * * *

(f) Item 79.6 "Applied Maintenance Burden" shall reflect a memorandum allocation by each air carrier of the total expenses included in subfunction 5300 "Maintenance Burden" between maintenance of flight equipment, by aircraft type, and maintenance of ground property and equipment. The allocation of subfunction 5300 (maintenance burden) shall include the net effect of charges and credits to profit and loss account 5272 Flight Equipment Airworthiness Provisions.

* * * * *

18. RSPA Form 41 Report (which will not appear in the Code of Federal Regulations) would be revised by removing Account No. 2860 under Stockholders' Equity as shown in Exhibit A to this document.

Issued in Washington, DC, on March 16, 1988.

M. Cynthia Douglass,

Administration, Research and Special Programs Administration, DOT.

BILLING CODE 4910–62–M

Exhibit A

BALANCE SHEET

AS AT: Air Carrier:

ASSETS	Account No.	AMOUNT
CURRENT ASSETS:		
Cash	1010	
Short-term investments	1100	
Notes receivable	1200	
Accounts receivable	1270	
Less: Allowance for uncollectible accounts	1290	
Notes and accounts receivable—net	1299	
Spare parts and supplies—net	1399	
Prepaid items	1410	
Other current assets	1420	
Total current assets	1499	
INVESTMENTS AND SPECIAL FUNDS:		
Investments in associated companies	1510	
Other investments and receivables	1530	
Special funds	1550	
Total investments and special funds	1599	
OPERATING PROPERTY AND EQUIPMENT:		
Flight equipment	1609	
Ground-property and equipment	1649	
Less: Allowances for depreciation	1668	
Property and equipment—net	1675	
Land	1679	
Equipment purchase deposits and advance payments	1685	
Construction work in progress	1689	
Leased property under capital leases	1695	
Leased property under capital leases—accumulated amortization	1696	
Total operating property and equipment	1699	
NON-OPERATING PROPERTY AND EQUIPMENT:	1791	
Less: Allowance for depreciation/accumulated amortization	1792	
Nonoperating property and equipment	1799	
OTHER ASSETS:		
Long-term prepayments	1820	
Unamortized development and preoperating costs	1830	
Other assets and deferred charges	1890	
Total other assets	1895	
TOTAL ASSETS	1899	

LIABILITIES AND STOCKHOLDERS' EQUITY	Account No.	AMOUNT
CURRENT LIABILITIES:		
Current maturities of long-term debt	2000	
Notes Payable—Banks	2005	
Notes Payable—Others	2015	
Trade accounts payable	2021	
Accounts payable—Others	2025	
Current obligations under capital leases	2080	
Accrued salaries, wages	2110	
Accrued vacation liability	2120	
Accrued interest	2125	
Accrued taxes	2130	
Dividends declared	2140	
Air traffic liability	2160	
Other current liabilities	2190	
Total current liabilities	2199	
NONCURRENT LIABILITIES:		
Long-term debt	2210	
Advances from associated companies	2240	
Pension liability	2250	
Noncurrent obligations under capital leases	2280	
Other noncurrent liabilities	2290	
Total noncurrent liabilities	2299	
DEFERRED CREDITS:		
Deferred income taxes	2340	
Deferred investment tax credits	2345	
Other deferred credits	2390	
Total deferred credits	2399	
STOCKHOLDERS' EQUITY:		
Capital stock:		
Preferred shares issued _____	2820	
Common shares issued _____	2840	
Total capital stock	2869	
Additional capital invested	2890	
Total paid-in capital	2899	
Retained earnings	2900	
Total stockholders' equity	2959	
Less: Treasury stock shares _____	2990	
Net stockholders' equity	2995	
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	2999	

*Denotes inverse amount

RSPA Form 41 Schedule B-1 (1-85)
Formerly CAB Form 41 Schedule B-1

[FR Doc. 88-6254 Filed 3-23-88; 8:45 am]
BILLING CODE 4910-62-C

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9175]

General Nutrition, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Pittsburgh, Pa. corporation, that manufactures and sells food supplements, from making false claims for products, unless it possesses reliable and competent scientific evidence that substantiates such claims. The consent order would also require respondent to pay a total of $600,000 to certain organizations for scientific research in the fields of nutrition, obesity, or physical fitness.

DATE: Comments must be received on or before May 23, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: C. Lee Peeler, FTC/S–4002, Washington, DC 20580, (202) 326–3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between General Nutrition, Inc., a corporation, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. General Nutrition, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 921 Penn Avenue, in the City of Pittsburgh, Commonwealth of Pennsylvania.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission on March 20, 1984, charging respondent with violations of Sections 5 and 12 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges. After a trial, an Administrative Law Judge issued an initial decision on February 24, 1986, ruling that counsel for the Federal Trade Commission proved all of the allegations contained in the complaint. Respondent subsequently filed an appeal to the Commission. The Federal Trade Commission staff, on January 4, 1984, initiated a separate investigation of certain other acts and practices of respondent. The consent order contained herein is intended to resolve both matters.

3. Respondent admits all the jurisdictional facts set forth in the Commission's proposed amended complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the proposed amended complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its amended complaint corresponding in form and substance with the draft of the amended complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the amended complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it might have to any other manner of service. The amended complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the proposed amended complaint and the order contemplated hereby. It understands that once the order has been issued. It will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent General Nutrition Incorporated, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Healthy Greens," or any substantially comparable product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from

representing, directly or by implication, contrary to fact, that any finding of the National Research Council, National Cancer Institute, American Cancer Society, or U.S. Government, or any finding contained in the Report entitled *Diet, Nutrition, and Cancer*, supports the claim that use of such product is associated with a reduction in incidence of any type of cancer.

II

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, or any other scientific opinion or data, with respect to such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

III

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," or "24 Hour Diet Plan," or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane or a combination thereof, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. Any such nutrient supplement will stimulate greater production or release of human growth hormone in users than in non-users;

B. Any such nutrient supplement will aid a user in achieving greater or faster muscular development than a non-user or will aid a user in achieving muscular development similar to or superior to the kind generally believed by bodybuilders to be achievable through the use of anabolic steroids, e.g., rapid or substantial muscular development;

C. Any such nutrient supplement will burn away fat or otherwise alter human metabolism to use up or "burn" stored fat, rather than stored carbohydrates, or will aid a user in attaining greater weight loss during sleep than a non-user; or

D. Any such nutrient supplement will expand, extend, or prolong life, or retard aging.

IV

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from using the expression "Growth Hormone Releaser," or other expressions of similar meaning as a brand name or description for any product, unless such product stimulates the body to produce, or the pituitary gland to release, significantly greater amounts of human growth hormone in users than in non-users and, at the time of using such expression, respondent possesses and relies upon reliable and competent scientific evidence that substantiates the representation. "Reliable and competent scientific evidence" shall mean for purposes of paragraphs IV and V of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

V

It is further ordered that respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, labeling, packaging, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication:

A. Concerning such product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans;

B. That such product assists or enables a user to lose or control weight or fat, or suppress appetite;

C. That such product expands, extends, or prolongs life or retards aging; or

D. That such product aids a user in achieving greater or faster muscular development than a non-user or aids a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user

unless, at the time of making such representation (V A–D above), respondent possesses and relies upon reliable and competent scientific evidence that substantiates the represeniation.

Provided however, that respondent shall not be liable under this paragraph for any representation contained on a package label or package insert for a product that meets all of the following conditions:

1. The product is manufactured and distributed by a third party and is not manufactured or distributed exclusively for respondent;

2. The product is generally available at competing retail outlets;

3. The product is not identified with respondent and does not contain respondent's name or logo;

4. The product was not developed or manufactured at the instigation or with the assistance of respondent; and

5. The product representation is not otherwise advertised or promoted by respondent.

VI

It is further ordered that respondent shall pay, in lieu of redress, the aggregate sum of six hundred thousand dollars ($600,000.00) divided in three equal parts to the American Diabetes Association, Inc., the American Cancer Society, Inc., and the American Heart Association. These funds shall be designated for the support of research or fellowships in the fields of nutrition, obesity or physical fitness. Respondent shall make payment in three installments, each installment to be divided equally among the recipients: the first installment in the amount of $300,000.00 within 30 days of the date of service of this order; the second in the amount of $200,000.00 within one year and 30 days of the date of service of this order; and, the third in the amount of $100,000.00 within two years and 30 days of the date of service of this order. In the event any default in payment occurs and continues for 10 days beyond the due date of payment and the giving of notice of such default, the entire remaining amount shall then become due and payable.

VII

It is further ordered that for three (3) years after the last date of dissemination of the representation, respondent, or its successors and assigns, shall maintain and upon request

make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondent in disseminating any representation covered by this order; and

2. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question any representation made by respondent that is covered by this order.

VIII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

IX

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions and to all distributors of products manufactured or marketed by respondent.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement containing a Consent Order from General Nutrition, Inc., a Pennsylvania corporation (the "respondent"). Under this Agreement, the respondent is prohibited from making certain false claims and will cease and desist from making certain other claims for products, unless it possesses reliable and competent scientific evidence that substantiates such claims. The consent Order also requires the respondent to pay a total of $600,000 to certain organizations for scientific research.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during the period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw its acceptance of the Agreement and take other appropriate action, or make final the proposed Order contained in the Agreement.

The proposed Consent Order is intended to settle two separate matters involving the respondent. The Commission issued an administrative Complaint (D. 9175) against the respondent on March 20, 1984, alleging that the respondent made false and unsubstantiated claims that its "Healthy Greens" food supplement and the ingredients in "Healthy Greens" were effective in reducing the risk of cancer. After a trial on the merits before an Administrative Law Judge ("ALJ"), the ALJ ruled that complaint counsel (attorneys from the FTC's Division of Advertising Practices) had proved all the allegations of the Complaint. Respondent appealed this ruling to the Commission. After post-trial appeal briefs were filed by the respondent and complaint counsel, but before oral argument, a proposed Amended Complaint and Consent Agreement were proferred to the Secretary of the Federal Trade Commission together with a Joint Motion to Withdraw from Litigation. The Commission withdrew the matter from litigation on February 4, 1987.

In addition to this litigated matter, the FTC's Chicago Regional Office has conducted an investigation of the respondent concerning advertisements for six food supplements: "Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," the "24 Hour Diet Plan," "L-Ornithine" and "L-Arginine."

The Amended Complaint accompanying the proposed Consent Order alleges that in connection with promoting "Healthy Greens" and the six products that were the subject of the Chicago Regional Office investigation, the respondent engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act and that the respondent disseminated false advertisements in violation of Section 12 of the Federal Trade Commission Act. According to the Amended Complaint, the respondent falsely represented that: (1) A 1982 Report of the National Academy of Sciences/National Research Council, entitled, *Diet, Nutrition and Cancer,* supported the claim that use of food supplements such as "Healthy Greens" was associated with a reduction in the incidence of certain cancers in humans; (2) research indicated that Vitamin E plays an important role in reducing the risk of cancer; (3) use of Healthy Greens is associated with a reduction in the incidence of certain cancers in humans; and (4) Vitamin E plays an important role in reducing the risk of cancer. The Complaint alleges that these first two claims were false and that the last two claims were unsubstantiated.

The Amended Complaint also alleges that respondent's advertisements were deceptive because respondent's claims that one or more of the other six products—"Challenge Growth and Training Vita-Pak," "Challenge Free Form Amino Acids," "Life Expander Growth Hormone Releaser," the "24 Hour Diet Plan," "L-Ornithine" and "L-Arginine"—could increase muscularity and strength, "burn" fat or "expand" life were false and unsubstantiated.

The Consent Order contains provisions designed to prevent the respondent from engaging in similar allegedly illegal acts and practices in the future.

Part I of the Order prohibits the respondent from representing, contrary to fact, that any finding of the National Research Council, National Cancer Institute, American Cancer Society or the United States Government or any finding contained in the report entitled, *Diet, Nutrition and Cancer,* supports the claim that use of "Healthy Greens" or a substantially comparable product is associated with a reduction in incidence of any type of cancer.

Part II of the Order prohibits the respondent from misrepresenting the purpose, content, sample reliability, results or conclusions of any scientific test, research article or any data with respect to any product's ability to cure, treat, prevent or reduce the risk of developing any disease in humans.

Part III of the Order prohibits the respondent from misrepresenting that "Challange Growth and Training Vita-Pak," "Challange Free Form Amino Acids," "Life Expander Growth Hormone Releaser" and the "24 Hour Diet Plan," or any free form amino acid nutrient supplement containing one of three specified amino acids, will: (1) Stimulate greater production or release of human growth hormone in users than in non-users; (2) aid a user in achieving greater or faster muscular development than a non-user; (3) "burn" away fat or otherwise alter human metabolism to use up or "burn" stored fat rather than carbohydrates, or aid a user in attaining

greater weight loss during sleep than a non-user; or (4) expand, extend or prolong life, or retard aging.

Part IV of the Order prohibits the respondent from using the brand name or description "Growth Hormone Releaser" unless the respondent can substantiate the claim inherent in use of that name or description.

Part V of the Order prohibits the respondent from representing, without adequate substantiation, that any product will: (1) Cure, treat, prevent or reduce the risk of developing any disease in humans; (2) assist or enable a user to lose or control weight or fat, or suppress appetite; (3) expand, extend or prolong life or retard aging; or (4) aid a user in achieving greater or faster muscular development than a non-user or aid a user in achieving greater endurance, strength, power or stamina or shorter exercise recovery or recuperation time than a non-user. Part V of the Order, however, does not apply to label or package representations contained on the products sold by respondent that are manufactured or distributed by other companies.

Part VI of the Order requires the respondent to pay a total of $600,000 over approximately a two-year period equally to the American Diabetes Association, Inc., the American Cancer Society, Inc., and the American Heart Association. These funds are to be used for research or fellowships in the fields of nutrition, obesity, or physical fitness.

Part VII of the Order requires the respondent to: (1) Retain records that respondent contends support any future advertising representation covered by the Consent Order; and (2) retain records that contradict any such representation.

Part VIII of the Order requires the respondent to give the Federal Trade Commission prior notification of any changes in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect its compliance obligations under the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and proposed Order, or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 88-6436 Filed 3-23-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Public Comment Period and Opportunity for Public Hearing on and Amendment to the Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the adequacy of amendments submitted by the State of Kansas to amend its permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments to Kansas' regulations are intended to render Kansas' regulations consistent with the revised Federal regulations contained in 30 CFR Chapter VII. The proposed regulation changes are in the areas of definitions, hydrology, coal exploration, approximate original contour, coal waste disposal, revegetation success, land use, protection of cultural resources and lands unsuitable for surface mining.

This notice sets forth the times and locations that the Kansas program and proposed amendments to that program are available for public inspection, the comment during which interested persons may submit written comments on the proposed amendments and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments relating to Kansas' proposed modification of its program not received on or before 4:00 p.m. c.s.t. on April 25, 1988, will not necessarily be considered in the decision process. A public hearing on the adequacy of the amendments will be held upon request on April 18, 1988. Any person interested in making an oral or written presentation at the public hearing should contact Mr. William J. Kovacic at the Kansas City Field Office by the close of the business on or before April 8, 1988. If no one has contacted Mr. Kovacic to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Kovacic, a public meeting may be held in place of the hearing. If possible, a notice of the meeting will be posted in advance at the locations listed under 'ADRESSES."

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106. Copies of the Kansas program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Kansas City Field Office, OSMRE Headquarters Office, and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m. c.s.t., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Kansas City Field Office.

Kansas City Field Office, Office of Surface Mining Reclamtion and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492.

Mined Land Conservation and Reclamation Board, 107 West 11th Street, P.O. Box 1418, Pittsburg, Kansas 66762; Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Kansas program on January 21, 1981 (46 FR 5892). Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 **Federal Register** (46 FR 5892). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 916.10, 916.12, 916.15, 916.16, and 916.20.

II. Submission of Amendments

On January 26, 1988 (Administrative Record No. KS-407) the State of Kansas submitted to OSMRE amendments to its approved regulatory program. The proposed regulations would amend the Kansas Administrative Regulations

(K.A.R.) of the Kansas Mined Land Conservation and Reclamation Board (MLCRB).

The Kansas MLCRB has incorporated by reference certain Federal regulations set out in 30 CFR Parts 701 through 817 as they existed on July 1, 1987. The list of amendments proposed to OSMRE contains the following regulations: K.A.R. 47–2–75 Definitions, K.A.R. 47–3–42 Application for mining permit, K.A.R. 47–7–2 Coal exploration, K.A.R. 47–9–1 Performance standards, K.A.R. 47–10–1 Underground mining, and K.A.R. 47–12–4 Land unsuitable for surface mining.

These revisions are proposed by the State of Kansas in response to 14 required program amendments placed on the Kansas program at 30 CFR 916.16 in the **Federal Register** (52 FR 19502) dated May 26, 1987. The revisions are also in response to a letter (Administrative Record No. KS–395) under 30 CFR Part 732 from OSMRE dated June 9, 1987 concerning the protection of historic properties during coal exploration as required in the final rule published by OSMRE in the **Federal Register** dated February 10, 1987 (52 FR 4244).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendments proposed by Kansas satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "Dates" or at locations other than Kansas City, Missouri, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. c.s.t. April 8, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date with all persons scheduled to comment being heard first, and those persons present in the audience who wish to comment being heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

Date: March 9, 1988.

[FR Doc. 88–6470 Filed 3–23–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–88–02]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Port of Miami, the Coast Guard is considering a change to the regulations governing the Dodge Island drawbridges at Miami, Florida by permitting an extension of the existing regulation and allowing the draw to remain closed during certain periods. This proposal is being made because periods of peak vehicular traffic have been identified. The proposed regulations would be in effect only until the newly permitted high-level fixed bridge between the mainland and Dodge Island is constructed and opened to vehicular traffic. Construction of this new bridge is scheduled to begin in approximately two to three months and completion is expected to be accomplished by March 25, 1991. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 9, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, of the Brickell Plaza Federal Building, 909 SE. 1st Ave., Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Brodie Rich, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Dodge Island drawbridges presently open on signal, except that, from 7:15 a.m. to 5:45 p.m. Monday through Saturday, except federal holidays, the drawbridges need open only on the quarter-hour and three quarter hour. Highway traffic data shows that two peak periods of vehicular traffic occur during the arrival and departure of passenger cruise vessels. The Port of Miami wants closed

periods on Saturdays and Sundays to accommodate these peak vehicular traffic movements. The vehicular traffic counts support closed periods during morning and afternoon peak periods on Saturdays. Therefore, the Coast Guard is proposing specific closed periods on Saturdays. During these closed periods, vessels would have the option of diverting around Dodge Island via Government Cut, a distance of 5.85 statute miles. Drawbridge openings and highway traffic data do not justify similar closed periods on Sundays. Vehicular traffic is approximately one-half of that experienced on Saturdays and the number of vessels transiting the ICW requiring draw openings is much greater.

However, to eliminate back-to-back draw openings, the Coast Guard is proposing to extend the existing weekday regulations to include the peak traffic periods on sundays. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261(pp) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St Marys River to Key Largo.

* * * * *

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that from 7:15 a.m. to 5:45 p.m. Monday through Saturday except federal holidays and from 9:15 a.m. to 2:15 p.m. on sundays, the draws need open only on the quarter-hour and three quarter-hour. From 9:20 a.m. to 11:10 a.m. and from 12:20 p.m. to 2:10 p.m. on Saturdays, the draws need not open.

* * * * *

Dated: March 9, 1988.

M. J. O'Brien,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 88-6469 Filed 3-23-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone; Pacific Ocean Between Point Sal and Point Conception, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which established a danger zone in the waters of the Pacific Ocean near Vandenberg Air Force Base, California, by deleting the requirement for periodic review of the regulations. These proposed amendments will, if approved, establish the danger zones for an infinite period of time without scheduled reviews.

DATE: Written comments must be submitted on or before April 25, 1988.

ADDRESS: HQDA, CECW-OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Rader at (213) 894–5606 or Mr. Sam Collinson at (202) 272–1782.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her address, identify this notice and give the reasons for the comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received and the Corps of Engineers determines that the opportunity to make oral presentations will aid the rulemaking process.

In accordance with regulations presently promulgated in 33 CFR 334.1130(b)(11), the danger zone regulations shall be in effect until further notice, but a 5-year review was required during September 1987. The Corps of Engineers and the Air Force have completed the required 5-year review of the regulations. The danger zones continue to be essential for Air Force operations and the regulations are presently adequate. We do not however, see a continuing need for specific dates to review the regulations. The Corps of Engineers periodically reviews these regulations as part of its normal maintenance program. The Air Force is also required to notify the Corps if conditions change sufficiently to warrant amending the regulations or deleting the regulations when appropriate.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and provisions of Executive Order 12291 do not apply. The Corps of Engineers certifies that if adopted, this proposal will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

Accordingly, the Corps of Engineers proposes to amend § 334.1130(b)(11) by deleting the 2nd sentence which reads "They shall be reviewed again during September 1987" as set forth below.

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 STAT. 266; (33 U.S.C. 1) and 40 STAT. 892; (33 U.S.C. 3)

2. Section 334.1130 (b)(11) is revised to read as follows:

§ 334.1130 Pacific Ocean, Western Space and Missile Center (WSMC), Vandenberg AFB, California; danger zones.

* * * * *

(b) * * *

(11) The regulations in this section shall be in effect until further notice.

Date: March 2, 1988.

Approved:

C. Hilton Dunn, Jr.,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 88-6389 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 24)]

Rail General Exemption Authority; Miscellaneous Manufactured Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing comments.

SUMMARY: The Commission issued a Notice of Proposed Rulemaking in this proceeding at 53 FR 3900 (February 10, 1988), seeking comments on various aspects of whether the rail transportation of listed commodities should be exempt from regulation. Comments were due March 28, 1988. At the request of certain parties the comment due date is extended to May 16, 1988.

DATE: Comments are now due May 16, 1988.

ADDRESS: An original and 10 copies of any comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert Lundy, (202) 275-6853, [TDD for Hearing Impaired: (202) 275-1721].

Decided: March 17, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-6361 Filed 3-23-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing on the Proposed Endangered Status for the Independent Valley Speckled Dace and the Clover Valley Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of Public Hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that a public hearing will be held for the proposed determination of endangered status for the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and the Independence Valley speckled dace (*Rhinichthys osculus lethoporus*). The former is known from only two small springs in northwestern Nevada and the latter from only one spring in the same area. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. The public hearing will allow comments on this proposal to be submitted from all interested parties.

DATE: The public hearing will be held from 7:00 to 9:00 p.m. on Thursday, April 7, 1988.

ADDRESSES: The public hearing will be held at the Wells High School, 115 Lake Avenue, Wells, Nevada 89835. Written comments and materials will still be accepted until April 25, 1988, and should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503-231-6150 or FTS 429-6150).

SUPPLEMENTARY INFORMATION:

Background

The Independence Valley speckled dace and Clover Valley speckled dace are very limited in distribution in northwestern Nevada. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. A proposal of endangered status for both fish was published in the **Federal Register** (52 FR 35282) on September 18, 1987. Extensions of the comment period were published in the **Federal Register** (52 FR 45976) on December 3, 1987, and (53 FR 5434) on February 24, 1988. The comment period now closes April 25, 1988.

On December 15, 1987, and January 15, 1988, a public hearing on this proposal was requested by Mr. Norman Sholes and Mr. Robert Wright, both residents in the area that the dace occur.

The U.S. Fish and Wildlife Service will hold a public hearing on proposed endangered status for the Independence Valley speckled dace and Clover Valley speckled dace from 7:00 to 9:00 p.m., on Thursday, April 7, 1988, at the Wells High School, Wells, Nevada.

Author

The primary author of this notice is Mr. Wayne S. White, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503-231-6150 or FTS 429-6150).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq;* Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 18, 1988.

Wally Steuke,

Acting Regional Director.

[FR Doc. 88-6405 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Regulation of the Administrative Conference of the United States. The committee will meet to discuss consultants Clayton P. Gillette and Thomas D. Hopkins' project on "Federal Agency Valuations of Human Life."

DATE: Friday, April 15, 1988 at 10:00 a.m.

Location: Steptoe and Johnson, 4th Floor Large Conference Room, 1330 Connecticut Avenue, NW., Washington, DC.

Public Participation: Attendance at the committee meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meeting will be available upon request.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, Staff Attorney, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Jeffrey S. Lubbers,

Research Director.

March 21, 1988.

[FR Doc. 88-6437 Filed 3-23-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agriculture Commodities To Be Made Available for Donation Overseas

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice increases the quantities of agricultural commodities owned by the Commodity Credit Corporation to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1988.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 447-3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)) ("Section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986-1990, not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress that there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or the Secretary determines that the restrictions in furnishing commodities under section 416(b)(3) prevent making available commodities in such quantities.

I have previously determined that a total of 1,600,000 metric tons of grains and oilseeds shall be made available for donation under section 416(b) during fiscal year 1988. This determination was published in the **Federal Register** on November 12, 1987 (52 FR 43375). The purpose of this notice is to inform the public that such previous determination is revised by increasing the quantity of corn and sorghum to be made available to 1 million metric tons and 500,000 metric tons, respectively. This increase is intended to enable CCC to meet additional commodity donation requests.

Determination

Accordingly, I have determined that 2,550,000 metric tons of grains and oilseeds shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1988. The kinds and quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains and oilseeds:	
Wheat	1,000,000
Corn	1,000,000
Sorghum	500,000
Soybeans	50,000
Total	2,550,000

Done at Washington, DC, this 18th day of March 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88-6418 Filed 3-23-88; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

Tobacco Inspection; Grower's Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period March 28-April 1, 1988, for producers of flue-cured tobacco who sell their tobacco at auction in Carthage and Aberdeen, North Carolina, to determine producer approval of the designation of the Carthage and Aberdeen tobacco markets as one consolidated auction market.

DATE: The referendum will be held March 28-April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250; Telephone Number (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated Carthage and Aberdeen, North Carolina, auction market. Carthage and Aberdeen, North Carolina, were separately designated on June 26, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act the two markets have been receiving mandatory grading services from USDA.

On September 8, 1987, an application was made to the Secretary of Agriculture to consolidate the designated markets of Carthage and Aberdeen. This application, filed by the warehousemen in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*, 7 CFR Part 29). On October 28, 1987, a public hearing was held in Aberdeen, North Carolina, pursuant to applicable provisions of the regulations under the Tobacco Inspection Act. A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, together with other available information which was officially noticed at the hearing relating to the application filed. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on March 18, 1988.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of March 28–April 1, 1988. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Carthage and Aberdeen are in favor of or opposed to the designation of the consolidation market for the 1988 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Carthage-Aberdeen.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Carthage or Aberdeen auction markets during the 1987 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by March 28, 1988, should immediately contact Lioniel S. Edwards at (202) 447–2567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: March 22, 1988.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 88–6575 Filed 3–23–88; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Environmental Impact Statement; Oil and Gas Leasing in Teton-Bridger East Study Area

AGENCY: Forest Service, USDA.

ACTION: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for oil and gas leasing in the Teton-Bridger East Study Area of the Bridger-Teton National Forest located in Fremont, Park, Teton, Sublette, and Lincoln Counties, Wyoming.

SUMMARY: The National Environmental Policy Act requires an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action will be invited to participate in the process (scoping). Input gathered during scoping will be used in preparation of the draft environmental impact statement (DEIS). The scoping process will include:

1. Identifying the potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

J.S. Tixier, Regional Forester, Intermountain Region, U.S. Forest Service, Ogden, Utah 84401 is the responsible official. The Bureau of Land Management (BLM), Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts for issuance of the oil and gas leases.

The Draft EIS will be available for review by March 1, 1989. Public meetings on the draft document will be held following distribution, and an announced review period. Notice of the date, time, and place for the public meetings will be announced in the local media. The Final EIS is scheduled to be completed by December 22, 1989.

Written comments and suggestions concerning the analysis questions about the proposed action and environmental impact statement, or information about public meeting dates and places should be directed to Al Koschmann, Forest Engineer, Bridger-Teton National Forest, Box 1888, Jackson, Wyoming 83001, Phone (307) 733–2752.

Date: March 9, 1988.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 88–6490 Filed 3–23–88; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Dixon High School Flood Prevention Measure, Illinois

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Dixon High School Measure, Lee County, Illinois.

FOR FURTHER INFORMATION CONTACT: John J. Eckes, State Conservationist, Soil Conservation Service, 301 North Randolph Street, Champaign, Illinois, 61820, Telephone (217) 398–5267.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John J. Eckes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns flooding of the Dixon High School, a National Guard Armory, and adjacent recreation facilities at Page Park. The planned works of improvement include 2100 linear feet of dike and pumping facilities.

The Notice of a Finding of No Significant Impact (FONSI) has been

forward to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by by contacting John J. Eckes.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Harry D. Slawter,

Assistant State Conservationist.

March 16, 1988.

[FR Doc. 88-6406 Filed 3-23-88; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Oregon Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 6:00 p.m., on April 21, 1988, at the Hilton Hotel, 921 Southwest Sixth Avenue, Portland, Oregon 97204. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Philip Montez, Director of the Western Regional Division (213) 894-3497, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 17, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-6391 Filed 3-23-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on April 18, 1988. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place:

Presidential Board of Advisors on Private Sector Initiatives.

Full Board Meeting

Monday, April 18, 1988, 3:15 p.m., at the United Way of America Headquarters, 701 North Fairfax Street, Alexandria, Virginia. Board Room.

Committee Meetings

Monday, April 18, 1988, 2:00 p.m., at the United Way of America Headquarters, 701 North Fairfax Street, Alexandria, Virginia. Rooms to be posted.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Robert H. Brumley,

Deputy General Counsel.

Date: March 18, 1988.

[FR Doc. 88-6431 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-BP-M

International Trade Administration

[A-307-701 and C-307-702]

Postponement of Final Antidumping and Countervailing Duty Determinations and Postponement of Antidumping Duty Public Hearing; Certain Electrical Conductor Aluminum Redraw Rod From Venezuela

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from Suramericana de Aleaciones Laminadas, C.A. (SURAL) in the antidumping investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on the request, we are postponing our final antidumping and countervailing duty determinations on certain electrical conductor aluminum redraw rod (redraw rod) from Venezuela until not later than June 22, 1988. We are also postponing our public hearing in the antidumping duty investigation until May 20, 1988.

EFFECTIVE DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mary Martin (202-377-2830) or Roy Malmrose (202-377-2815), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 8, 1988, we published a preliminary determination of sales at less than fair value with respect to this merchandise (53 FR 3614, February 8, 1988). This notice stated that if the investigation proceeded normally, we would make our final determination by April 18, 1988.

On February 9, 1988, SURAL requested a postponement of the final determination for 60 days pursuant to section 735(a)(2)(A) of the Act. In a letter dated March 1, 1988, SURAL stated that it was its intention to request the maximum extension for the final determination until June 22, 1988. This respondent accounts for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping duty determination until not later than June 22, 1988.

On November 2, 1987, (52 FR 42703, November 6, 1987) we granted the request of petitioner, Southwire Company, to extend the deadline date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product pursuant to section 705(a)(1) of the Act, as amended, [19 U.S.C. 1671d(a)(1)]. Accordingly, we are also postponing the date of the final countervailing duty determination until not later than June 22, 1988.

Public Comment

In accordance with 19 CFR 353.47, we will hold a public hearing in the antidumping duty investigation to afford interested parties an opportunity to comment on the preliminary determination at 10:00 a.m. on May 20, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit prehearing briefs in at least 10 copies to the Assistant Secretary for Import Administration, Room B-099, at the above address by May 13, 1988. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 353.46 and 19 CFR 355.34 not less than 30 days before the final determinations or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of these postponements, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 21, 1988.

[FR Doc. 88-6462 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-701]

Rescheduling of Public Hearing; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is rescheduling the public hearing in the countervailing duty investigation of carbon steel wire rod from Malaysia. The hearing will now be held at 10:00 a.m. on March 28, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who have requested the opportunity to participate in the hearing must submit 10 copies of the proprietary version and five copies of the nonproprietary version of the pre-hearing briefs to the Acting Assistant Secretary for Import Administration, Room B-099, at the above address by 12:00 noon on March 24, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 353.46, additional written views will be considered for the final determination only if received within seven days after the hearing transcript becomes available.

FOR FURTHER INFORMATION CONTACT: Steve Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-0189 or 202/377-0161.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

March 18, 1988.

[FR Doc. 88-6461 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held April 19 and 20, 1988, in the Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC. The April 19 meeting will convene in Room 1092 at 9:30 a.m. on April 20, the meeting will reconvene at 9:30 a.m. and continue to its conclusion in Room 1092 in the Herbert C. Hoover Building. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Comments are especially invited on Commodity Control List entries 1584A —Oscilloscopes and 1533A —Spectrum Analyzers.
4. Public discussion on any other matters related to activities of the Electronic Instrumentation Technical Advisory Committee.

Comments should consider the need for revision (strengthening relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

Executive Session

5. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202-377-2583.

Date: March 21, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88-6450 Filed 3-23-88; 8:45 am]

BILLING CODE 3510-DT-M

Joint Meeting of the Electronic Instrumentation Technical Advisory Committee and the Semiconductor Technical Advisory Committee; Partially Closed Meeting

A joint meeting of the Electronic Instrumentation Technical Advisory Committee and Semiconductor Technical Advisory Committee will be held on April 21, 1988, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC. The meeting will convene in Room 4830 at 9:30 a.m.

General Session

1. Opening remarks by the Chairmen.
2. Public comments are invited on the following entries on the Commodity Control List (CCL):

CCL 1529A—Microprocessor and Microcomputer Development Instruments or Systems;

CCL 1355A—Automated Test Equipment.

3. Any other matters of mutual interest to the Semiconductor Technical Advisory Committee and the Electronic

Instrumentation Technical Advisory Committee.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committees. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, contact Carole P. Willis, 202–377–2583.

Date: March 21, 1988.

Betty A. Ferrell,

Acting Director, Technical Support Staff.

[FR Doc. 88–6451 Filed 3–23–88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Application for the U.S. Army Health Professions Scholarship Program; DA Form 4628; and OMB Control number 0702–0028.

Type of Request: Extension.

Annual Burden Hours: 2,000.

Annual Responses: 2,000.

Needs and Uses: Applicants for the U.S. Health Professions Scholarship Program must submit information requested so that in the selection process all pertinent information can be reviewed and selection for scholarship support made on a competitive basis.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1988.

[FR Doc. 88–6463 Filed 3–23–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Civilian Marksmanship Program; DA Forms 1271, 1271–1, 1271–2, 1272, 1273 & 1274; and OMB Control Number 0702–0043.

Type of Request: Extension.

Annual Burden Hours: 100.

Annual Responses: 100.

Needs and Uses: This data is used to screen applications and provide a record as required by Title 10 U.S.C. sections 4307 and 4308. The information is for congressional and internal use only to justify the support to Civilian Rifle Clubs from the Director of Civilian Marksmanship (DCM).

Affected Public: Non-profit institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should sent to Mr. Edward Springer at the Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Byrum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1988.

[FR Doc. 88–6464 Filed 3–23–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title Applicable Form and Applicable OMB Control Number: Marksmanship Competition Rifle and Pistol (Individual & Team) Entry and Score Cards; DA Forms 1342, 1343, 1344, & 1345; and OMB Control Number 0702–0068.

Type of Request: Extension.

Annual Burden Hours: 216.

Annual Responses: 3,820.

Needs and Uses: DA Forms are used to record individual and team competitor scores for the annual conduct of Excellence-in-Competition (EIC) and National Matches competition. These scores are required by the Office of the Director of Civilian Marksmanship for computation and recording purposes.

Affected Public: Non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to

Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 21, 1988.

[FR Doc. 88–6465 Filed 3–23–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19 and 20 April 1988.

Times of Meeting: 0830–1630 Hours, each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on U.S. Army Aeromedical Research Laboratory; Fort Rucker, Alabama, will meet to examine the efficiency and effectiveness of the U.S. Army Aeromedical Research Laboratory. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–6476 Filed 3–23–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 21 April 1988.

Time of Meeting: 0800–1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Competition in Contracting will meet to draft its report and make recommendations on its findings. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–6477 Filed 3–23–88; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Directorate of Personal Property; Domestic Program

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, Department of Defense (DOD).

ACTION: The Department of Defense is proposing to strengthen the current qualification program for motor carriers seeking participation in the Department of Defense Domestic Household Goods Program.

SUMMARY: MTMC will require any new motor carrier seeking approval and entry into the Department of Defense Domestic Household Goods Program to certify and provide evidence to MTMC that they are capable of providing managed transportation services which will meet established standards. Motor Carriers seeking approval must submit proof of registration and insurance of their vehicles and material handling equipment, addresses of their terminal facilities, and other resources required in the movement of household goods. A change to Appendix A, the Tender of Service, of DOD 4500.34R is pending.

DATE: Comments submitted on or before April 25, 1988.

ADDRESS: Comments should be addressed to Headquarters, Military Traffic Management Command, ATTEN: MT–PPQ–Q, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: LT Marcial B. Dumlao, SC, USN, HQMTMC, ATTN: MT–PPQ–Q, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, (703) 756–1784.

Robert F. Waldman,

Deputy Director of Personal Property.

[FR Doc. 88–6390 Filed 3–23–88; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Volume 57 ITGBL Rate Solicitation.

SUMMARY: For Volume 57, effective 1 October 1988, MTMC will test a new method of filing rates for household goods and unaccompanied baggage. Instead of filing a rate for the traffic channel US66 (Texas North) to GE37 (Germany North), carriers will file a rate from each personal property shipping office in US66 to GE37. The rate solicitation will contain special rate filing instructions for this traffic channel.

FOR FURTHER INFORMATION CONTACT: Commander, Military Traffic Management Command, ATTN: MT–PPC (Ms. Barbara Scott or Naomi King), Room 408, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–2385.

Joseph R. Marotta,

Colonel, U.S. Army, Director of Personal Property.

[FR Doc. 88–6382 Filed 3–23–88; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command Directorate of Personal Property; International Program

AGENCY: Military Traffic Management Command MTMC), DOE.

ACTION: Volume 57 ITGBL Rate Soliciation.

SUMMARY: During Volume 57, which will be effective 1 October 1988, we will test a new procedure for filing Letters of Intent (LOI). Only those carriers who intend to set the rates or file other than administrative high rates would be required to have LOIs at all installations within a rate area by the initial filing (IF) deadline date. In addition those carriers who me-too the rate setter would be required to have full LOI rate area coverage by the me-too filing deadline. The participating carriers would not need to have full LOI rate area coverage.

Testing will be done in two rate areas, US38 (Illinois) and US64 (Louisana). The following installations would be utilized:

Barksdale AFB, LA; England AFB, LA; Naval Support Activity, New Orleans, LA; Ft Polk, LA; Chanute AFB, IL; Scott AFB, IL; Naval Training Station, Great Lakes, IL; St Louis Area Support Center, Granite City, IL; Rock Island, IL; and Ft Sheridan, IL.

FOR FURTHER INFORMATION CONTACT: Commander, Military Traffic Management Command, ATTN: MT-PPC (Mrs. Mary Sullivan or Mrs. Naomi King), Room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050 (703) 756-2383.

Joseph R. Marotta,

Colonel, U.S. Army, Director of Personal Property.

[FR Doc. 88-6383 Filed 3-23-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Research Announcement; Solicitation for Laser Fusion Research Proposals

The Nevada Operations Office, Department of Energy (DOE), invites any university or other institutions of higher education, not-for-profit or for-profit organizations, or other entity to submit competitive proposals for a contract for the conduct of basic research experiments in high-energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics. The project period for which DOE expects to provide funding for an approved project is one year.

The unique resources of the NLUF are available to scientists for state-of-the-art experiments in areas such as plasma physics, spectroscopy of high ionized atoms, laboratory astrophysics, inertial fusion, fundamental physics, materials science, and biology and chemistry.

The Laboratory for Laser Energetics was established in 1970 to investigate the interaction of high power lasers with matter. It is the home of: OMEGA, a 2.5 trillion watt, 24-beam laser system (at 0.35 um) and the Glass Development Laser (GDL) a 250 billion watt, single-beam prototype for OMEGA (at 0.35 um).

DOE has designated these elements of the Laboratory as the National Laser User's Facility, with the aim of making this unique research tool available to qualified researchers nationwide. The NLUF is funded by DOE and maintains and operates the facility which is available for scientific collaboration and for assistance with user experiments. Outside researchers are encouraged to collaborate with staff members.

The NLUF offers to the scientific community its capabilities for laser matter interaction experiments or for using the short, 100 picosecond, pulses of laser light, x-rays, or neutrons for probing the structure of matter.

For more technical information about the facilities and potential collaboration at the NLUF please contact: James Knauer, Manager, National Laser User's Facility, Laboratory for Laser Energetics, University of Rochester, 250 East River Road, Rochester, NY 14623, Telephone No. 716-275-2074.

I. Definitions

Basic Research: Basic research means research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any immediate application of that knowledge.

II. Proposals

An original and 12 copies of an initial proposal for new work must be submitted to Robert Clemensen, Contracting Officer Representative, Nevada Operations Office, P.O. Box 98518, Las Vegas, Nevada, 89193-8518 (Phone: 702-295-1070).

III. Information To Be Provided in Proposals

Each proposal should include the following information:

A. Basic Information

- Name and address of the offeror.
- If an organization, indicate type, e.g., profit, not-for-profit, educational institution, small business, minority owned, etc.
- Name(s) and telephone number(s) of the offeror's technical and business personnel whom the Department may contact for negotiation purposes;
- Names of any other Federal agencies or other parties who have received (or will be receiving) a proposal for the same effort or activity and/or who are (or will be) providing or receiving funds for the effort or activity;
- Date of submission; and
- Signature of a responsible official or authorized representative of the organization or a person authorized to contractually obligate the organization.

B. Detailed Information

- A detailed description of the proposed project, including the objectives of the project, its relationship to and significance within its field of research and proposer's plan for carrying it out. Such information should provide a basis upon which DOE can evaluate the proposal in view of the criteria provided in Section V.C. below.
- Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the proposer, and the cost-sharing arrangements, if any. (While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process.)
- A budget with supporting justification sufficient to evaluate the costs of the proposed project. (Standard Form 1411 may be used.) This item should be submitted with the proposal, but as a detached part.
- The proposal must be signed by the individual who is applying or by an individual who is authorized to act for the proposing organization and to commit the proposer to comply with the terms and conditions of the contract, if awarded.

C. Other Information for Proposers

Proposals may be submitted to DOE at the address specified in Section III of this Announcement at any time. Prior to the closing date of 2:00 p.m. local prevailing time, December 15, 1988. Proposals received after the closing date shall not be considered for funding during fiscal year 1989.

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

Approximately $600,000 will be allocated to this program and multiple awards are anticipated. However, DOE reserves the right to fund, in whole, or in part, any, all, or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded.

D. Continuation/Renewal Proposals

Proposals for a continuation or a renewal award must be submitted in an original and seven copies to the DOE office cited in Section III above. Renewal proposals for existing awards will be considered in the same manner as proposals for new endeavors. The renewal proposal should describe the plans for the next period, contain a cost estimate, and otherwise adhere to these instructions.

IV. Proposal Evaluation and Selection

A. DOE shall evaluate the proposals using scientific peer review against the criteria set forth in C. below. DOE will use this external peer review as the basis of the Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available. Selections for award will be made by a designated DOE official (with due regard for conflict of interest and protection of proposal information).

B. Evaluators shall be selected on the basis of their professional qualifications and expertise in the field of research.

C. DOE shall evaluate new and renewal proposals based on the following criteria which are approximately of equal weight:

- The overall scientific and technical merit of the project;
- The relevance of the stated objectives to the field of research;
- The appropriateness of the proposed method or approach;
- The competence and experience and known past performance of the proposer, principal investigator and/or key personnel;
- The adequacy of any necessary equipment which is to be provided by the proposer;
- The appropriateness and adequacy of the proposed budget; and
- Other appropriate factors, which may be established and set forth by DOE by a modification to this Research Announcement or in a superseding Research Announcement.

D. In addition to the evaluation criteria set forth in paragraph C., if a proposer is currently under an NLUF contract, DOE shall consider the proposer's performance under the existing contract during the evaluation of a renewal or continuation proposal.

E. After the selection of a proposal for funding, DOE may, if necessary, enter into negotiations with a proposer. Such negotiations are not a commitment that DOE will make an award. DOE may accept proposals without discussion; hence, proposals should initially be as complete as possible and be submitted on the proposers' most favorable terms.

Dated: March 10, 1988.

Nick C. Aquilina,

Manager, Nevada Operations Office.

[FR Doc. 88-6460 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Coordinating Subcommittee on Petroleum Storage & Transportation, Committee on Petroleum Storage & Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Thursday, April 28, 1988, 9 am.

Place: Windsor Court Hotel, Board Room, 300 Gravier Street, New Orleans, Louisiana.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC 20585, Telephone: 202/586-4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting: Discuss study assignment and review task group assignments.

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.
—Discuss study assignment.
—Review task group assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Donald L. Bauer,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 88-6454 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order; Salomon Inc

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Salomon Inc (Salomon) executed on January 22, 1988, and published for comment in 53 FR 3237 on February 4, 1988.

As required by 10 CFR 205.199J DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Laurence J. Hyman, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC. 20585, (202) 586-8900.

The full text of the Consent Order was published in the **Federal Register** in Vol. 53 commencing at 3238. Copies may also be obtained in person at DOE's Freedom of Information Reading Room, Room IE-190, Forrestal Building 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On February 4, 1988, DOE published notice in the **Federal Register**, Vol. 53 at page 3237, announcing the execution of a Proposed Consent Order between Salomon and DOE. The text of the Proposed Consent Order accompanied that Notice, which also summarized the relevant facts, and a Press Release issued at the same time summarized the Proposed Consent Order and the relevant facts.

As a result of an audit of Salomon's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) tentatively concluded that Salomon had overcharged in certain crude oil resale transactions during the period August 19, 1973 through December 31, 1977. Salomon disputed ERA's audit findings and denied any overcharge liability. No formal allegations of violations were issued against Salomon and the Consent Order resolves these matters.

As consideration, Salomon has agreed to pay $16.25 million within 30 days of the effective date of the Consent Order. ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the amounts so paid.

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the

Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on March 18, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88-6458 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-288-000 et al.]

Southern California Edison Co. et al., Electric Rate and Corporate Regulation Filings

March 18, 1988.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER88-288-000]

Take notice that on March 14, 1988, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following contract, which has been executed by Edison and the Valley Electric Association, Inc. (VEA):

Contract for Exchange of Electric Service

Under the terms and conditions of the Contract, Edison will deliver to VEA and VEA will deliver to Edison capacity and energy to serve certain portions of each utilities' isolated service areas along the state boundary between California and Nevada which are relatively close to the lines of the other utility.

The Contract was to become effective September 30, 1978, and inasmuch as service has been provided under the conditions of this contract for the mutual benefit of both utilities' ratepayers, Edison requests waiver of notice requirements and an effective date of September 30, 1978.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the Valley Electric Association, Inc.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power and Light Company

[Docket No. ER88-287-000]

Take notice that on March 14, 1988, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Twenty-One to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light and Fort Pierce Utilities Authority (Fort Pierce) (Rate Schedule FERC No. 68).

FPL states that under Amendment Number Twenty-One, FPL will transmit power and energy for Fort Pierce as is required in the implementation of its interchange agreement with the Utility Board of the City of Key West, Florida.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served upon Fort Pierce.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Company

[Docket No. ER88-291-000]

Take notice that on March 14, 1988, Central Hudson Gas & Electric Company (Central Hudson) tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 17, 1988 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $6,060.58 to $5,354.75 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, a decrease in the monthly Transmission Charge from $6,036.82 to $3,976.77 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $3,572.66 to $3,706.63 in accordance with Article IV.2 of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice of requirement of Subsection 35.3 of the Commission's Regulations to permit this proposed increase to become effective January 1, 1988.

Copies of filing by Central Hudson were served upon: New York State Electric and Gas Corporation, 4500 Vestal Parkway, East Binghamton, NY 13902.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Alabama Power Company

[Docket No. ER88-290-000]

Take notice that on March 14, 1988, Alabama Power Company tendered for filing five Transmission Service Delivery Point Agreements specifying fifty-one additional delivery points to be covered by the Agreement between Alabama Power Company and Alabama Electric Cooperative, Inc., for Transmission Service to Distribution Cooperative Members of AEC which was dated August 28, 1980 (Agreement). This Agreement has been designated Rate Schedule FERC No. 147 by the FERC. The purpose of these agreements is to provide for the commencing of transmission service at these delivery points under the Agreement. Transmission Service will commence under the Agreement on June 1, 1988 for Central Alabama Electric Cooperative Inc.'s Bradford, East Chilton, Enterprise, Evergreen, Friendship, Kingston, Maplesville, Rockford, Speigner, Statesville, Stewartville, Thorsby, Titus, Union Grove, Wallsboro, and Wetumpka delivery points; for Coosa Valley Electric Cooperative, Inc.'s Childersburg, Eureka, Lincoln, New London, Ohatchee, Stewarts Crossroads, Stockdale, and Talladega delivery points; for Dixie Electric Cooperative, Inc.'s Arrowhead, Cecil, Halstead, LeGrand, Notasulga, Pintlalla, Union Springs, Woodley and "Y" Community delivery points; and for Tallapoosa River Electric Cooperative, Inc.'s Blackwater, Browns-Uchee, Cheaha Mountain, Cottonton, Elias, Ft. Mitchell, Hurtsboro, LaFayette, Mellow Valley, New Site, Opelika, Penton, Providence, Pyriton, Randolph, Sturkie and Tallapoosa River delivery points. Also, transmission service will commence under the Agreement on July 1, 1988 for Clarke-Washington Electric Membership Corporation's Camden delivery point. Effective June 1, 1988, Alabama Power Company filed Twenty-Fifth Revised Sheet No. 37 and Twenty-First Revised Sheet No. 38 to its FERC Electric Tariff, Original Volume No. 2 and withdrew, effective July 1, 1988, Twenty-First Revised Sheet No. 38 to reflect the termination of wholesale service at the above listed delivery points concurrent with the commencement of transmission service as outlined above.

Copies of the filing were served upon Alabama Electric Cooperative, Inc.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Detroit Edison Company

[Docket No. ER88-289-000]

Take notice that on March 14, 1988, Detroit Edison Company (Detroit Edison) tendered for filing a letter agreement dated January 13, 1988, between Detroit Edison and General Public Utilities which constitutes a redetermination of the fixed charge rate applicable to transactions under Amendment No. 6 among Consumers

Power Company, the Detroit Edison Company, and the Toledo Edison Company, dated June 1, 1982, for the sale of Specific Capacity Power to General Public Utilities. This Amendment has been denoted as the Detroit Edison Company Rate Schedule FERC No. 11. Detroit Edison states that the redetermination of the fixed charge rate was made pursuant to the terms of Amendment No. 6.

Detroit Edison states that the letter agreement establishes the fixed charge rate at 14.035% for service rendered on and after January 1, 1988, and is subject to redetermination during the term of Amendment No. 6 in accordance with section 7.12. Detroit Edison stated the redetermination reflects the reduction of the effective corporate income tax rate from 40% to 34% for 1988; the effect being a reduction of 1.835% in the fixed charge rate from that used in the initial agreement. This determination will decrease the monthly demand charge to $427,023 in accordance with sections 7.11 and 7.12 of Service Schedule G.

Detroit Edison states that copies of the filing were served upon Consumers Power Company, the Cleveland Electric Illuminating Company (Centerior Energy), General Public Utilities Corporation, the Toledo Edison Company, and the Michigan Public Service Commission.

Detroit Edison requests waiver of the notice requirements to permit a retroactive effective date of January 1, 1988 for the 14.035% fixed charge rate.

Comment date: April 4, 1988, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6486 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM88-4-000 and RM88-5-000]

Intent To Prepare Environmental Impact Statement and to Hold Scoping Session

Issued March 18, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of intent to prepare environmental impact statement and to hold scoping session.

SUMMARY: This notice informs the public that the Federal Energy Regulatory Commission (Commission) intends to hold a scoping session on Monday, April 18, 1988, in order to prepare an environment impact statements (EIS) for two notices of proposed rulemakings (NOPRs) issued by the Commission on March 16, 1988. This scoping session is being held to discuss the environmental impact of the issues associated with two NOPRs. One NOPR proposes regulations to govern a class of non-traditional utility suppliers, called independent power producers (IPPs) and the second NOPR proposes regulations to govern bidding programs under the Public Utility Regulatory Policies Act of 1978 (PURPA). Interested persons and agencies are encouraged to attend these meetings and provide comments that will assist Commission's staff with the determination of issues to be addressed in the EIS.

EFFECTIVE DATE: March 18, 1988.

DATE AND LOCATION: The scoping session will be held on Monday, April 18, 1988, and will be comprised of two meetings to be held in two separate locations—Baltimore, Maryland, and Albuquerque, New Mexico. The Commission will issue a second notice in the near future detailing the exact time and location for each meeting in both cities.

FOR FURTHER INFORMATION CONTACT:

Michael Schopf, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8002

Bernard W. Tenebaum, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8100.

SUPPLEMENTARY INFORMATION:

In the matter of Regulations Governing Independent Power Producers; Docket No. RM88-4-000 and Regulations Governing Bidding Programs; Docket No. RM88-5-000.

Notice of Intent To Prepare Environmental Impact Statement and to Hold Scoping Sessions

March 18, 1988.

On March 16, 1988, the Federal Energy Regulatory Commission (Commission) issued two notice of proposed rulemaking (NOPRs). One NOPR proposes regulations to govern a class of non-traditional utility suppliers, called independent power producers (IPPs). A second NOPR proposes regulations to govern bidding programs under the Public Utility Regulatory Policies Act of 1978 (PURPA). The bidding NOPR would authorize state regulatory authorities and nonregulated electric utilities to implement bidding procedures as a means of establishing rates for power purchases from qualifying facilities (QFs) under section 210 of PURPA.

The Commission has determined that these proposals may constitute a major Federal action significantly affecting the quality of the human environment. The Commission therefore intends to prepare a single environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969.

Scoping Session

Interested persons and agencies are invited to participate in a scoping session to discuss the environmental impact of the issues associated with both NOPRs. The scoping session will be comprised of two meetings to be held in two separate locations on Monday, April 18, 1988. One scoping meeting will be held in Baltimore, Maryland. Another scoping meeting will be held in Albuquerque, New Mexico. The Commission will issue a second notice containing the exact time and location for each meeting in both cities in the near future.

Scoping sessions are utilized by Commission staff to: (1) Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement; (2) present those environmental issues that have been identified for coverage in the EIS to the public and to experts familiar with the project; (3) receive input from the public and experts on the issues presented; and (4) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meeting and to assist the Commission's staff with the determination of issues to be addressed in the EIS.

Participants in the scoping sessions may give their comments orally or in writing. Written comments regarding the

environmental effects of the NOPRs will be accepted during the scoping sessions or may be filed with the Commission on or before Tuesday, May 3, 1988. Comments filed with the Commission must be addresed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The scoping sessions will be recorded by a stenographer and all statements (oral or written) will become part of the public record.

A participant that wishes to reserve time to speak at the meetings or obtain information about the scoping process should contact Michael Schopf, Office of the General Counsel (202) 357-8002 or Bernard W. Tenenbaum, Office of Economic Policy (202) 357-8100.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6488 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-344-001]

Central Phosphates, Inc.; Application for Commission Recertification of Qualifying Status as a Cogeneration Facility

March 18, 1988.

On February 1, 1988, Central Phosphates, Inc. (Applicant), of P.O. Drawer L, Plant City, Florida 33566 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the phosphate fertilizer facility in Plant City, Florida. The facility will consist of four sulfuric acid plant heat recovery units and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used to produce concentrated phosphoric acid and in the fertilizer manufacturing processes such as reactor heating, steam line tracing and storage tank heating. The net electric power production capacity of the facility will be 34,945 kW. The primary energy source is waste heat produced from the exothermic process in the production of sulfuric acid. The installation of the facility was expected to commence on or about April 1, 1987.

By order issued July 16, 1987, the Commission granted certification of the facility as a cogeneration facility (40 FERC ¶ 62,038).

The recertification is requested due to the change of ownership from CF Industries, Inc. to Central Phosphates, Inc. All other facility characteristics remain the same.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6482 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-286-000]

Cascade Natural Gas Corp. (Complainant) v. Northwest Pipeline Corp., Chevron Chemical Co., and Intermountain Gas Co. (Respondents); Complaint

March 21, 1988.

Take notice that on March 9, 1988, Cascade Natural Gas Corporation (Cascade), P.O. Box 24464, Seattle, Washington 98124, filed in Docket No. CP88-286-000 pursuant to Rules 206 and 212 of the Commission's Rules of Practice and Procedure and sections 7, 14 and 16 of the Natural Gas Act, a complaint and motion for restraining order.

Cascade complains that Northwest Pipeline Corporation (Northwest), Chevron Chemical Company (Chevron), and Intermountain Gas Company (Intermountain) are engaging in the unlawful transportation of natural gas in interstate commerce and that Chevron is bypassing natural gas service historically rendered to Chevron by Cascade. Cascade requests that the Commission order Northwest and Cascade to cease and desist from the transportation of natural gas in interstate commerce for which they do not have requisite authority. Cascade also requests an order restraining the unlawful conduct pending a formal hearing on the issues raised by Cascade.

Cascade states that Northwest has informed Cascade that Northwest is performing transportation service pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) for Chevron, which is an end-user connected directly to Northwest's system at an ammonia plant located near Finley, Washington (Finley plant). Cascade states that Northwest is authorized to sell and deliver gas to Chevron at the Finley plant, but has no certificate authorization under the Natural Gas Act to transport and deliver third-party gas to Chevron at the Finley plant.

Cascade further states that Chevron also owns another industrial facility near Kennewick, Washington (Kennewick Plant) which Cascade has served since 1959. The gas supply for the Kennewick Plant has historically been purchased by Cascade from Northwest and been resold to Chevron; more recently, Cascade has purchased alternate, lower-cost supplies for Chevron and has transported to the Kennewick plant gas supplies obtained by Chevron on its own, it is explained.

Cascade asserts that Chevron has recently constructed a high-pressure gas transmission pipeline to transport gas from the Finley plant to the Kennewick plant. The pipeline is constructed on right-of-way along the Columbia River that is not owned by Chevron; the two industrial plants are not contiguous, nor are they operated as part of the same manufacturing operation, it is explained.

Cascade also states that on February 5, 1988, Northwest announced that it would begin performing transportation of natural gas on its system under NGPA Section 311 commencing February 10, 1988. Further, Cascade states that Northwest sent Cascade two letters dated February 19, 1988, stating that Northwest would provide self-implementing transportation of gas to Chevron under Part 284, Subpart B of the Commission's Regulations, with the gas being delivered to the Finley plant. Both letters indicated that transportation would be provided by Northwest on behalf of Intermountain, it is explained. Cascade states, further, that its field personnel have verified that gas is now flowing from the Finley plant through Chevron's newly constructed high-pressure pipeline to the Kennewick plant. Moreover, Cascade states, Chevron has terminated purchasing gas at the Kennewick plant. Cascade states that the loss of this sale results in the loss of approximately $24,400 per month in net revenues to Cascade.

Cascade alleges that the transportation by Northwest does not qualify as self-implementing transportation service under NGPA

Section 311, since Intermountain, a local distribution company in the State of Idaho, has to Cascade's information and belief no physical or legal connection to the transportation being provided to Chevron purportedly "on behalf of" Intermountain, nor is Intermountain receiving any benefit from the transportation. Since the "on behalf of" test of section 311 of the NGPA has not been met, Cascade argues that the transportation is not exempt from the jurisdictional requirement of the NGPA. Cascade argues that both Northwest and Chevron are transporting gas in interstate commerce within the meaning of the Natural Gas Act, without having certificates of public convenience and necessity that authorize such transportation. Cascade, therefore, requests the Commission to order Northwest and Chevron to cease such transportation and requests a restraining order of directing them to cease transportation pending a hearing on Cascade's Complaint.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before April 8, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the Complaint are also due on or before April 8, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6481 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2333-000]

George Cameron Creel; Notice of Filing

March 17, 1988.

Take notice that on March 10, 1988, George Cameron Creel filed an application pursuant to section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission for Commission authorization to hold concurrently the following positions:

Position	Name of corporation
Vice President	Baltimore Gas and Electric Company.
Director	Safe Harbor Water Power Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 31, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6487 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-125-008]

Distrigas of Massachusetts Corp.; Amended Compliance Filing

March 18, 1988.

Take notice that on March 15, 1988, Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing the below listed tariff sheets to amend its compliance filing in this docket and to include in its FERC Gas Tariff, First Revised Volume No. 1 the following:

Third Revised Sheet No. 17A
Substitute First Revised Sheet No. 23

DOMAC states that the tariff sheets are submitted as an amendment to the TS-1 compliance filing made on February 18, 1988 to comply with Commission Opinion No. 291-A. DOMAC also states that the submission of the tariff sheets is without prejudice to DOMAC's positions on judicial review of Opinion Nos. 291 and 291-A.

A copy of the filing was mailed to DOMAC's jurisdictional customers and all parties set out on the office service list in Docket No. RP85-125-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6427 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

March 18, 1988.

Take notice that on March 15, 1988, MIGC, Inc. tendered for filing copies of Forty-Sixth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1, in accordance with the Commission's Rules and Regulations under the Natural Gas Act.

MIGC states that Forty-Sixth Revised Sheet No. 32 provides for a Purchased Gas Adjustment rate increase of 77.16 cents per MMBtu effective May 1, 1988 in order (1) to provide a current gas cost adjustment reflecting a 5.59 cents per MMBtu increase which is designed to permit MIGC to reflect the higher cost of gas purchases which it is currently incurring; (2) to provide an adjustment to MIGC's Unrecovered Purchased Gas Cost Account which produces a 74.23 cents per MMBtu increase over MIGC's present surcharge adjustment; and (3) to recover carrying charges on the Unrecovered Purchased Gas Cost Account. MIGC states that the single largest contributing factor to the proposed rate increase is the elimination of a large supplier refund from its unrecovered purchased gas cost account balance, which refund will have been returned to MIGC's sales customers prior to the May 1, 1988 proposed effective date of the instant PGA filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 25, 1988. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6430 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-77-000]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

March 18, 1988.

Take notice that on March 11, 1988, Natural Gas Pipeline Company of America (Natural) submitted for filing First Revised Sheet Nos. 21, 23, 24, 26, 27, 32, 33 and 35 to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective June 1, 1988.

Natural states that the proposed sheets revise the provisions of Rate Schedule FTS to provide shippers with additional flexibility to reserve mainline capacity by allowing each shipper the option of selecting up to five secondary receipt points and five secondary delivery points. The proposed provision provides that the secondary points must be along and within the requested transportation paths established by the primary points. The Secondary receipt and delivery points shall be allowed only to the extent that they do not require additional capacity on any portion of Natural's system. Natural also states that volumes may be nominated in any mix of primary and secondary receipt and delivery points along and within the transportation paths established by the primary points. Shipper cannot use secondary points to increase the Maximum Daily Quantity levels along and within the transportation paths established by the primary points. Natural further states that the reservation charge, commodity charge and the fuel percentage will be based on the primary receipt and delivery points specified in the transportation agreement.

Natural also submitted for informational purposes only a study which indicates the amount of spare capacity and the segments on Natural's system where such spare capacity will become available if Natural's existing sales customers converted their sales contract quantities by a total of 200 MMcf per day and 500 MMcf per day to firm transportation.

Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective June 1, 1988, a date coincident with the proposed effective date of its Gas Supply Charge.

A copy of this filing was mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6428 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-018]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 21, 1988.

Take notice that on March 14, 1988, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff Sheets:

Sixth Revised Sheet No. 1
Sixth Revised Sheet No. 14
Sixth Revised Sheet No. 84

Northwest states that these tariff sheets provide for the cancellation of Rate Schedule IS-1 as allowed by Commission order of May 31, 1985 at Docket No. RP85-13-000 *et al.* Rate Schedule IS-1 made gas available at an incentive rate to Northwest's ODL-1, PL-1 and DS-1 customers for gas purchase volumes on a monthly basis that were between a test period quantity and their contract demand on a customer by customer basis. Rate Schedule IS-1 expired by its terms on April 30, 1986. Northwest requests an effective date of April 13, 1988 with respect to the tendered tariff sheets.

A copy of the filing has been mailed to all affected customers under Rate Schedule IS-1 and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6484 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-005]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 21, 1988.

Take notice that on March 16, 1988, Southern Natural Gas Company (Southern) tendered for filing the followong tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987:

Second Revised Sheet No. 30S
Second Revised Sheet Nos. 30U-30V
Second Revised Sheet Nos. 30X-30Z
Original Sheet No. 30Z.1
Second Revised Sheet No. 30KK
Second Revised Sheet Nos. 30MM-30NN
Second Revised Sheet Nos. 30PP-30RR
Original Sheet No. 30RR.1
Second Revised Sheet No. 30SS
Second Revised Sheet Nos. 45.23-45R.24
Second Revised Sheet No. 45R.27
First Revised Sheet No. 531.34
First Revised Sheet No. 531.41
First Revised Sheet No. 531.50
First Revised Sheet No. 531.57

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedule FT and IT. The Commission issued its Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Convening Technical Conference and Granting Late Interventions on November 27, 1987, pursuant to which Southern filed revised tariff sheets on December 14, 1987. On March 1, 1988, the Commission issued

its Order Accepting Partially Granting Rehearing, Accepting Compliance Filing Subject to Conditions, and Establishing Hearing (Order). Ordering Paragraph (C) required Southern to file within 15 days of the date of the issuance of the Order to make revisions prescribed by the Order. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before March 28, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6483 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-78-000]

Transwestern Pipeline Co.; Tariff Changes

March 21, 1988.

Take notice that on March 15, 1988, Transwestern Pipeline Company (Transwestern) filed revised tariff sheets listed on the attached sheet. Such changes are designed to clarify and ease the administration of Transwestern's tariff provisions relative to non-discriminatory transportation services under its FTS-1 and ITS-1 Rate Schedules. Transwestern states that its filing also includes a revised form of service agreements for such services. Transwestern seeks a May 1, 1988 effective date for its proposed changes. Copies of Transwestern's filing were sent to all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to become a party to this proceeding should on or before March 28, 1988, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix—F.E.R.C. Gas Tariff Second Revised Volume No. 1

2nd Revised Sheet No. 29
3rd Revised Sheet No. 30
3rd Revised Sheet No. 31
3rd Revised Sheet No. 32
3rd Revised Sheet No. 33
3rd Revised Sheet No. 34
3rd Revised Sheet No. 34A
1st Revised Sheet No. 34D
1st Revised Sheet No. 68A
3rd Revised Sheet No. 126
3rd Revised Sheet No. 127
3rd Revised Sheet No. 128
1st Revised Sheet No. 129
Original Sheet No. 129A
1st Revised Sheet No. 130
1st Revised Sheet No. 131
Original Sheet No. 132
4th Revised Sheet No. 133-137
Original Sheet No. 138
Original Sheet No. 139
Original Sheet No. 140
Original Sheet No. 141
Original Sheet No. 142
Original Sheet No. 143
Original Sheet No. 144
Original Sheet No. 145
4th Revised Sheet No. 146
5th Revised Sheet No. 147

[FR Doc. 88-6485 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP82-55-037 and RP87-7-031]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

March 18, 1988.

Take notice that on March 11, 1988, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Second Revise Volume No. 1, copies of certain tariff sheets to revise the rates for Transco's G and OG Rate Schedules for the period commencing April 1, 1987. Transco states that the tariff sheets are intended to comply with the terms of the Commission's January 29, 1988 order in this proceeding.

Transco states that Transco made a similar filing on February 16, 1988 but included only the tariff sheets pertaining to Transco existing rates, *i.e.*, tariff sheets to be effective as of January 1, 1988. Transco states that by Letter Order dated March 2, 1988, the Commission rejected Transco's February 16 filing, based on the concern that Transco had not calculated for each appropriate period the changes to Transco's G and OG rates for the period commencing April 1, 1987.

Transco states that in the instant filing, Transco has corrected the foregoing omission in its February 16 filing by including herein tariff sheets for each appropriate date commencing April 1, 1987 when rate filings required a change to Transco's rates.

Transco states further that Transco made refunds to its G and OG customers and filed a report of such refunds with the Commission on March 2, 1988. Transco states that Transco calculated the refunds to G and OG customers based on the difference between the rates actually billed to such customers and the rates at an imputed 80 percent load factor.

Transco states that copies of this filing are available at Transco's offices in Houston, Texas, and have been mailed to Transco's jurisdictional sales customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before March 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-6429 Filed 3-23-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. WH-006]

Energy Conservation Program for Consumer Products, Decision and Order Granting Waiver From Water Heater Test Procedures to Aero Environmental Limited

AGENCY: Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order [Case No. WH-006] granting Aero Environmental Limited a Waiver for its models CF-32T, CF-40S, and CF-50T oil-fired water heaters from the existing DOE water heater test procedures.

FOR FURTHER INFORMATION CONTACT:

Esher R. Kweller, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9513.

SUPPLEMENTAL INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Aero Environmental Limited has been granted a waiver for its Models CF-32T, CF-40S and CF-50T oil-fired water heaters, permitting the company to use a "simulated use" test method in lieu of the "cold-start recovery" test method in the existing test procedure.

Issued in Washington, DC, March 10, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3266, and the National Appliance Energy Conservation Act of 1987, Pub. L. 100-12, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including water heaters. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

Section 430.27 allows the Department of Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. 45 FR 64108 (September 26, 1980).

Pursuant to § 430.27(g), the Department shall publish in the **Federal Register** notice of each waiver granted, and any limiting conditions of each waiver.

Aero Environmental Limited (AERO) filed a "Petition for Waiver" in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** the Aero petition and solicited comments, data, and information respecting the petition. 52 FR 46526 (December 8, 1987). No comments were received. DOE consulted with the Federal Trade Commission on January 29, 1988, concerning the Aero petition.

Assertions and Determinations

Aero filed a petition for waiver from the DOE test procedure for oil-fired water heaters. The Aero petition essentially asks for the allowance to rate its heaters in the same manner allowed to previous petitioners, Bock Water Heaters, Inc. (Bock), Ford Products Corporation (Ford), and Lochinvar Water Heater Corporation (Lochinvar).

Aero offers that its models CF-32T, CF-40S, and CF-50T oil-fired water heaters have a high termal mass which leads to unrepresentative values of recovery efficiency, and consequently, Aero seeks relief from the DOE "cold-start" recovery efficiency test methodology.

In the Bock, Ford, and Lochnivar Decision and Orders, DOE allowed the petitioners to determine the recovery efficiency of their oil-fired water heaters by use of a "simulated use" test method (50 FR 47106, November 14, 1985, 50 FR 50678, December 11, 1985, and 52 FR 46526, December 8, 1987, respectively). Accordingly, in the interest of consistency, and since DOE determined that the existing test method is inappropriate with regard to high thermal mass water heaters, today's Decision and Order allows Aero the use of the "simulated use" test method for its models CF-32T, CF-40S, and CF- 50T oil-fired water heaters.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Aero Environmental Limited (Case No. WH-006) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions, Aero Environmental Limited shall comply in all respects with the test procedures in Appendix E of 10 CFR Part 430, Subpart B. Aero shall be permitted to test its models CF-32T, CF-40S, and CF-50T oil-fired water heaters for recovery efficiency on the basis of the test procedures set forth below:

(i) Recovery Efficiency for Oil Water Heaters by the Simulated Use Method

The simulated use test involves withdrawing water from the hot water outlet of the water heater in three separate consecutive water draws. For both the first and second water draws, 21.4 gallons ± 0.5 gallon of water shall be withdrawn from the water heater. The third water draw shall be of a sufficient volume to bring the total volume of water withdrawn from the water heater by means of these three water draws to 64.3 gallons ± 0.5 gallon. Water shall be withdrawn at a rate of 3.0 ± 0.25 gallons per minute for each of the three water draws. All water volume measurements shall be made using the water flow meter specified in section 2 of Appendix E of 10 CFR Part 430.

Begin the simulated use test at the time a thermal equilibrium is achieved at the maximum mean tank temperature by recording the mean tank temperature in degrees F, recording the time, recording the water meter reading, commencing measurement of electrical and fossil fuel energy consumption by the water heater and starting the first water draw. During this draw and during all subsequent draws measure the temperature of the inlet and outlet water every minute commencing one minute after the start of the draw until the draw is complete. Immediately upon the conclusion of the first water draw record the water meter reading. Determine the first draw average inlet and outlet water temperatures T_{ID1} and T_{TD1} respectively) by averaging the measured temperature during the first draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the first water draw, begin the second water draw. Immediately upon the conclusion of the second water draw, record the water meter reading. Determining the second draw average inlet and outlet water

temperatures (T_{TD2} and T_{TD2} respectively) by averaging the measured temperatures during the second draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of the second of the second water draw, begin the third water draw. Immediately upon the conclusion of the third draw, record the water meter reading and determine the third draw average inlet and outlet water temperatures (T_{ID3} and T_{TD3} respectively) by averaging the measured temperatures during the third draw. At the time a thermal equilibrium is achieved at the maximum mean tank temperature after the cutout following the recovery of third draw, record the total amount of energy consumed by the water heater since the start of the test (Z_R), in Btu's (where 3,412 Btu equals 1 kilowatt-hour). Determine the mean of the three outlet water temperature averages (T_{TWD} and the mean of the three inlet water temperature averages (T_{IWD}), in degrees F. Determine the total amount of water withdrawn from the water heater over all three water draws (V_{WD}), in gallons, from the appropriate recorded water meter readings.

(ii) Calculation of Recovery Efficiency Using the Results of the Simulated Use Test Method

Calculate the recovery efficiency (E_R) expressed as a dimensionless quantity and defined as:

$$E_R = \frac{(k)\,(V_{WD})(T_{TWD} - T_{IWD})}{(Z_R)}$$

where:

k = 8.25 Btu per gallon °F, the nominal specific heat of water

V_{WD} = volume of water withdrawn from the water heater over all three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in gallons

T_{TWD} = mean of the outlet water temperature recordings made over the period of the three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in degrees F

T_{IWD} = mean of the inlet water temperature recordings made over the period of the three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in degrees F

Z_R = total amount of energy consumed by the water heater over the period of the three water draws of the simulated use test, determined in accordance with subparagraph (i) above expressed in Btu's.

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes a final rule with regard to the testing of oil-fired water heaters with high thermal mass.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, March 10, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 88-6459 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of November 13 Through November 20, 1987

During the Week of November 13 through November 20, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 13 through Nov. 20, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 13, 1987	Hilt Truck Lines, Inc., Washington, DC	RR270-6	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The November 2, 1987 Decision and Order (Case No. RF 270-1464) issued to Hilt Truck Lines, Inc. would be modified regarding the firm's application for refund as a surface transporter in the stripper well litigation proceeding.
Nov. 16, 1987	Centras, Inc., Sterling Heights, MI	RR270-27	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The October 26, 1987, Decision and Order issued to Centra, Inc. (Case No. RF270-1196) would be modified regarding the firm's application for refund as a surface transporter in the stripper well litigation proceeding.
Do	Coline, Pennzoil & Perry Gas/New York, Albany, New York.	RM2-92, RM10-93 & RM183-94.	Request for Modification/Rescission in the Second Stage Refund Proceedings. If granted: The June 6, 1987, Decision and Order issued to New York (Case Nos. RO2-283, RO10-282, & RO183-290) would be modified regarding the State's application for refund in the Coline, Pennzoil and Perry Gas refund proceedings.
Do	Senco Marketing, Irving, Texas	KEE-0157	Exception to the Reporting Requirements. If granted: Senco Marketing would no longer be required to file certain EIA reporting forms.
Nov. 17, 1987	Environmental Task Force, Portland, Oregon	KFA-0142	Appeal of an Information Request Denial. If granted: The October 5, 1987 Freedom of Information Request Denial issued by the Chief of FOI and Privacy Act Branch would be rescinded and the Environmental Task Force would receive access to documents regarding the creation of a group to assess the current and future status of nuclear power in America.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Nov. 13 through Nov. 20, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Do	Iowa, Des Moines, Iowa	KEG-0024	Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for stripper-well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

REFUND APPLICATIONS RECEIVED

[Week of Nov. 13 to Nov. 20, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/16/87	A.P. Green Refractories Corp	RF 299-40.
11/20/87	Emerson Electric Company	RF 225-10918.
11/20/87	Emerson Electric Company	RF 250-2742.
11/19/87	Luci Petroleum, Inc	RF 299-42.
11/19/87	Lucy Vitale	RF 276-295.
11/18/87	Southland Corporation	RF 293-9.
11/13/87	Toms River Chemical Corp	RF 299-37.
11/13/87	Leach Camper Sales, Inc	RF 299-38.
11/13/87	Sealright Co., Inc	RF 299-39.
11/16/87	Charles E. Smith Companies	RD 272-219.
11/16/87	Publicker Industries	RD 272-432.
11/16/87	Bethlehem Steel Corp	RD 272-436.
11/16/87	Lukens Steel Company	RD 272-462.
11/16/87	Alcan Rolled Products Co	RD 272-472.
11/16/87	R. R. Donnelly & Sons, Co	RD 272-479.
11/16/87	Florida Steel Corp	RD 272-486.
11/16/87	Alumax Aluminum Corp	RD 272-498.
11/16/87	Reynolds Elect. & Engineering	RD 272-507.
11/16/87	Buffalo Color Corp	RD 272-1581.
11/16/87	Abitibi-Price Corp	RD 272-1697.
11/16/87	Norton Company	RD 272-1768.
11/16/87	Hibbing Taconite Mining Co	RD 272-2233.
11/6/87	Hite Oil Company	RF 265-2585.
06/24/87	Rees Oil Company, Inc	RF 265-2586.
12/02/87	Fletcher Oil Company	RF 301-2.
11/13/87 thru 11/20/87	Crude Oil Refund Applications Received	RF 272-10205 thru RF 272-10953.
11/13/87 thru 11/20/87	Gulf Refund Applications Received	RF 300-3607 thru RF 300-3866.

[FR Doc. 88-6455 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 1 Through February 5, 1988

During the week of February 1 through February 5, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Storage Technology Corporation, 02/04/88; KFA-0157

The Storage Technology Coporation filed an Appeal from a partial denial by the Manager of the Schenectady Naval Reactors Office of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). The DOE found that the Manager properly withheld the sought material under Exemption 4 of the FOIA. An important issue that was considered in the Decision and Order was whether Federal Acquisition Regulation § 15.1001(c)(1)(IV) mandates the disclosure of unit prices in a contract between a government contractor and a private firm.

USA Petroleum Corp., 02/02/88; KFA-0155

USA Petroleum Corp. (USAP) filed an Appeal challenging the extent to which the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) complied with an OHA order directing that ERA release certain documents to USAP pursuant to the Freedom of Information Act. In its appeal, USAP questioned the adequacy of the ERA's search. The DOE found that the ERA's search for responsive documents was not adequate and therefore remanded the matter to the ERA for further consideration.

Interlocutory Order

Economic Regulatory Administration, 02/04/88; KRZ-0075

The Economic Regulatory Administration (ERA) filed a submission entitled "Motion for an Order Which Accords No Weight to the Affidavits of B.B. Fox and Robert E. Way or, In the Alternative, Motion for Further Discovery." The ERA's motion related to a prior OHA decision approving discovery in connection with an enforcement proceeding involving Texaco, Inc. In its motion, ERA claimed that certain affidavits provided by Texaco pursuant to the discovery decision were without factual basis and should therefore be accorded no weight in the underlying enforcement proceeding. In the alternative, the ERA sought to depose the affiants, Fox and Way. After considering the motion, the OHA determined that the affidavits of Fox and Way would be most efficiently tested through cross-examination in the context of an evidentiary hearing. Accordingly, OHA directed that an evidentiary hearing be convened to

receive the testimony of Fox and Way. In all other respects, the motion was denied.

Supplemental Order

Ernest E. Allerkamp, et al., 02/04/88: KFX-0033, et al.

The DOE issued a Decision and Order implementing procedures for the distribution of $130.5 million (plus accrued interest) in crude oil overcharge funds obtained from 111 separate settlements, consent orders or remedial orders. The DOE determined that the funds should be distributed in accordance with the Department's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Accordingly, 80 percent of the money in these cases was divided equally between the state and federal governments. Twenty percent of the funds was reserved for direct restitution to injured parties submitting claims to the OHA under 10 CFR Part 205, Subpart V. The specific information to be included in applications for refund and the standards by which Subpart V crude oil refund claims will be evaluated are set forth in the Decision. All applications must be submitted by June 30, 1988.

Refund Applications

Beacon Oil Company/Frost Oil Company, 02/03/88: RF238-47

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of the Frost Oil Company (Frost) in the Beacon Oil Company (Beacon) special refund proceeding. The DOE concluded that Frost was injured with respect to the 119,829 gallons of diesel fuel, kerosene, and solvents that the firm purchased from Beacon during the period August 19, 1973 through October 31, 1973. Accordingly, Frost was granted a refund or $3,802, representing $1,831 in principal and $1,971 in accrued interest.

Carl Broweleit, et al., 02/04/88: RF272-1355, et al.

The DOE issued a Decision and Order approving the applicatons for crude oil overcharge refunds submitted by 22 claimants. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated refined petroleum product purchase volumes for their agricultural activities. The DOE granted the claimants a total refund of $775 based on purchases of 3,869,394 gallons of refined petroleum products from August 19, 1973 through January 27, 1981

Chattanooga Area Regional Transportation Authority, et al., 02/05/88: RF272-2, et al.

The DOE issued a Decision and Order granting refunds to 19 transit authorities and municipal governments that filed Applications for Refund under OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As a transit authority or governmental entity end-user, each applicant was found to have been injured as a result of the crude oil overcharges on the basis of the end-user presumption of injury. The refund granted was $22,034.

Chet's Cedarville Quicki Stop, 2/5/88: RF272-2047

The DOE issued a Decision and Order denying an application for crude oil overcharge refunds filed by Chet's Cedarville Quicki Stop. Chet's was a gasoline retailer during the period August 19, 1973 through January 27, 1981. Because Chet's did not demonstrate that it was injured due to the crude oil overchanges, it was ineligible for a crude oil refund.

Clouse Brothers, et al., 02/05/88: RF272-4136, et al.

The DOE issued a Decision and Order granting refunds to 50 claimants that filed Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. All claimants were agricultural end-users of petroleum products. Each claimant was found to have been injured as a result of the crude oil overcharges on the basis of the end-user presumption of injury. The refunds totaled $1,549.

Cranston Oil Service Company, Inc./ Pasco La Fazia, et al., 02/05/88: RF276-31, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by purchasers of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc. Each applicant's refund was based on estimated usage of 2,500 gallons of heating oil during the consent order period. Since each applicant was an end-user of that product, each was presumed injured as a result of its Cranston purchases. The sum of the refunds approved in this Decision is $754, representing $650 in principal and $104 in interest.

Earnest Lawson, et al., 02/04/88: RF272-2160, et al.

The DOE issued a Decision and Order approving thirty-two Applications for Refund from crude oil overcharge funds. The thirty-two claimants were farmers who used the USDA formula to derive the number of gallons of petroleum products they purchased during the period August 19, 1973 through January 27, 1981. Because the claimants were end-users, they were not required to demonstrate injury. A total refund of $346 was approved in this Decision and Order.

Hartsville Oil Mill, 02/02/88: RF272-1361

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order approving the Application for Refund submitted by Hartsville Oil Mill from crude oil overcharge funds. The OHA determined that each of four petroleum products purchased by Hartsville could properly form the basis for a refund. In particular, the DOE determined that Hartsville was eligible for a refund for purchases of hexane, a hydrocarbon used by Hartsville to extract vegetable oil from soybeans. The DOE fund the hexane purchases could form the basis for a refund because that product was covered by Agency regulations. The OHA granted the claimant a total refund of $2,809 based on purchases of 14,046,895 gallons of refined petroleum products.

Howard Oil Co., Inc./Chevron U.S.A., Inc., 02/01/88; RF286-7

The DOE isued a Decision and Order granting a refund to Chevron U.S.A., Inc. from the fund which Howard Oil Co., Inc. remitted to the DOE pursuant to a Settlement Agreement. The DOE found that Chevron, a reseller of Howard middle distillates, demonstrated that it was unable to pass through Howard overcharges and was, accordingly, injured as a result of its Howard purchases. The total refund approved in this Decision was $37,106 representing $31,170 in principal and $5,936 in interest.

Husky Oil Company/Dave's Husky Service, 02/02/88: RF161-106

The DOE issued a Decision and Order concerning an Application for Refund filed by Dave's Husky Service in the Husky Oil Company special refund proceeding. Dave's, a retailer of Husky motor gasoline and diesel fuel, demonstrated that it was eligible for a refund based on the $5,000 small claims presumption. Accordingly, the firm was granted a refund of $1,861, representing

$1,274 in principal and $587 in accrued interest.

Mobil Oil Corporation/ A–Z Service Station, Inc., et al., 02/05/88, RF225–6318, et al.

The DOE issued a Decision granting 56 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $48,650 ($39,274 in principal plus $9,376 in interest).

Mobil Oil Corporation/Adeeb Bathish, et al., 01/04/88, RF225–1350, et al.

The DOE issued a Decision granting 42 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $42,911 ($34,638 in principal plus $8,273 in interest).

Mobil Oil Corporation/Alfred A. Rose, et al., 02/05/88, RF225–5776, et al.

The DOE issued a Decision granting 22 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $31,176 ($25,167 in principal plus $6,009 in interest).

Mobil Oil Corporation/Manor Fuel Oil Company, Inc., 02/04/88 RF225–5012, RF225–5013

The DOE issued a Decision granting an Application for Refund from the Mobil Oil Corporation escrow account to Manor Fuel Oil Company, Inc. Since Manor was unable to provide data demonstrating injury, its refund was limited to the small claims threshold of $5,000. The refund amount approved in this Decision and Order totalled $6,194, representing $5,000 in principal plus $1,194 in interest.

Mobil Oil Corporation/Perry Oil Company, 02/03/88, RF225–9258, RF225–9259, RF225–9260

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation escrow account filed by Perry Oil Company, a reseller of Mobil refined Petroleum products. In its refund application based on motor gasoline purchases, Perry elected to submit documentation that it was injured by Mobil's pricing practices. The DOE found that the firm's negtative gasoline banks through December 1, 1974 indicated that the firm had passed through any motor gasoline overcharges incurred prior to that date. The DOE concluded that Perry was therefore eligible to receive the full volumetric refund amount only for its purchases of Mobil motor gasoline made after December 1, 1974. That refund amount was $4,284. Because this amount was less than the $5,000 small claims level and because the firm had not attempted to demonstrate injury concerning its Mobil middle distillate and motor oil purchases, the DOE also granted Perry a refund based on its purchases of those products sufficient to raise its refund principal to $5,000. The DOE further granted the firm interest of $1,194.

Saber Agency, Inc./NGL Supply, Inc., 02/05/88, RF192–22

NGL Supply, Inc. filed an Application for Refund in the Saber Energy, Inc. special refund proceeding. The DOE found that NGL Supply purchased Saber products in only four quarters of the eight-year consent order period and therefore the firm was a spot purchaser. Because NGL Supply neither demonstrated that its purchases were not spot purchases, nor rebutted the presumption that as a spot purchaser it suffered no injury, its Application for Refund was denied.

Dismissals

The following submissions were dismissed:

Name	Case No.
Bonus International, Inc	RF225–10252.
Crowley Maritime Corp	RF225–6168.
Depere Service Center	RF225–9543.
Oklahoma	KEG–0028.
Wither Oil Corp	RF225–6622, RF225–6623.
Wooleyhan Transport Co	RF225–3650.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

March 17, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–6453 Filed 3–23–88; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $860,896 obtained as a result of a Consent Order that the DOE entered into with E.D.G., Inc. (Case No. KEF–0003), a reseller-retailer of petroleum products located in Long Beach, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed on or before April 25, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF–0003.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a December 17, 1979 consent order between the DOE and E.D.G., Inc. (EDG). That consent order settled certain disputes between the firm and the DOE concerning EDG's possible violations of DOE regulations in its sales of gasoline and No. 2 distillates. The consent order covers the period August 19, 1973 through September 24, 1976.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $860,896, funded by EDG pursuant to the consent order. The DOE

has proposed that the consent order fund be disbursed to 28 purchasers identified in the Consent Order that were allegedly overcharged by EDG in its sales of gasoline and No. 2 distillates. These customers and their respective overcharge amounts are listed in the Appendix of the Proposed Decision. Under the proposed procedures, the OHA will consider refund applications only from these 28 identified EDG customers. The amount of the refund available to an applicant will be limited to the amount it was allegedly overcharged by EDG according to the Consent Order. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered product from EDG. The specific requirements for proving injury are set forth in the Proposed Decision and Order.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 16, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order

March 16, 1988.

Name of Firm: E.D.G., Inc.
Date of Filing: October 16, 1985.
Case Number: KEF-0003.

On October 16, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving E.D.G., Inc. (EDG). 10 CFR Part 205, Subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of EDG refund applications is authorized.

I. Background

EDG was a "reseller-retailer" of gasoline and No. 2 distillates as that term was defined in 10 CFR 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. On the basis of an extensive audit of the firm's pricing practices during the period August 19, 1973 through September 24, 1976 (the consent order period), the ERA alleged that EDG overcharged its customers in sales of gasoline and No. 2 distillates.[1] In order to settle all claims and disputes between EDG and the DOE, the two parties entered into a consent order that became final on December 17, 1979. The Consent Order covers EDG's sales of motor gasoline and No. 2 distillates during the consent order period.

This Proposed Decision and Order concerns the distribution of $945,524, plus accrued interest, that EDG remitted to the DOE for direct restitution to 29 of its identified reseller-retailer customers. *See* EDG Consent Order, 44 FR 73140 (December 17, 1979).[2] Appendix D of the EDG Consent Order, which is attached as an Appendix to this Proposed Decision, sets forth the names of these EDG purchasers and the amount that each customer was allegedly overcharged by EDG.[3] Accordingly, the protential refund claimants in this proceeding are the reseller-retailer customers listed in the Appendix of this Proposed Decision.[4]

II. Proposed Refund Procedures

As indicated above, the EDG customers listed in the Appendix of this Proposed Decision constitute a finite set of potential refund claimants. We therefore propose to consider refund applications *only* from these customers. We further propose that each claimant's refund in this proceeding be limited to the amount it was allegedly overcharged by EDG. These amounts are listed next to each potential claimant's name in the Appendix. We recognize that any eligible firm could have been overcharged in amounts greater than the overcharges specified in the appendix of this Proposed Decision. Nonetheless, an eligible firm may not receive a refund in excess of the amount specified in the Appendix. It would simply be illogical to permit an applicant to receive a refund that exceeds the amount that the ERA collected with respect to the consent order firm's transactions with that applicant. Moreover, it would be inequitable to permit such a refund, because it would deplete the consent order fund at the expense of other parties entitled to direct and indirect restitution from the fund. Accordingly, on the grounds of both logic and equity, an eligible firm's maximum refund will be limited to the amount specified for that firm in the Appendix.

The allocation of potential refund amounts to claimants is only the first step in the distribution process. We propose that in order to receive a refund, an applicant must demonstrate that it did not pass on the alleged overcharges to its customers during the consent order period. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396 (1981). As we have done in many prior refund cases, we propose to adopt specific injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by EDG's alleged overcharges. We will discuss these presumptions in Section II(A) below.

(A) Refund Claimants

(1) Reseller-Retailer Applicants Seeking Refunds of $5,000 or Less. We propose to adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by EDG's pricing practices. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,224-25 (1982). We recognize that the

[1] EDG ceased its petroleum operations on September 24, 1976 and was therefore subject to the regulations only until that date.

[2] On January 9, 1980, EDG remitted $945,524 in principal and $360,859 in interest to the DOE. According to our records, this total of $1,306,383 ($945,524 + $360,859 = $1,306,383), which includes principal and interest accrued theron, should be treated as principal. *See* March 21, 1986 Memo from the Office of Hearings and Appeals to the Office of the Controller at 1. Any successful claimants in this proceeding will be awarded a pro-rata share of the $1,306, 383, plus a pro-rata share of the interest that has accrued on this amount since the date of remittance.

[3] World Oil Company, Inc., one of the 29 EDG customers identified in Appendix D of the EDG Consent Order, waived its right to a refund in the EDG proceeding under a consent order it entered into with the DOE on January 19, 1984. *See* World Consent Order, 49 FR 2290, 2291 (January 19, 1984). Consequently, the DOE transferred the amount designated to World in the EDG proceeding, $445,487 in principal and $412,216 in interest, from the EDG Escrow Account to the World Account. World Oil Company is therefore not eligible to apply for a refund in this proceeding.

[4] The Consent Order states that EDG agreed to refund an additional $54,476 plus accrued interest to 34 of its end-user customers. *See* Appendix C of EDG Consent Order for a list of these end-user customers and the amounts that they were allegedly overcharged by EDG. These funds have already been distributed pursuant to the Consent Order and therefore are not subject to the present Subpart V proceeding.

cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of EDG products it purchased during the consent order period. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). We propose that applicants seeking refunds in excess of $5,000 must follow the procedures that are outlined below.

(2) Reseller-Retailer Applicants Seeking Larger Refunds. We propose that if a firm's claim exceeds $5,000, it will be required to provide a detailed demonstration of its injury. We propose that it will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, we propose that a claimant must show that market conditions would not permit it to pass through those increased costs. *See Panhandle Eastern Pipeline Co./I. V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 at 88,265 (1983). For periods in which the DOE regulations did not require retailers to compute cost banks, we propose that a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from EDG. *American Pacific International*, 14 DOE ¶ 85,158 at 88,295 (1986). If a reseller-retailer that is eligible for a refund in excess of $5,000 elects not to submit the cost bank and purchase price information described above, it may still apply for a small claims refund of $5,000, plus accrued interest.

(3) Other Applicants. If any one of the firms listed in the Appendix of this Proposed Decision is not a reseller-retailer, it is still eligible to apply for a refund in this proceeding. We propose to adopt a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry where injured by EDG's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,450 (1986). We propose, therefore, that if any EDG purchaser listed in the Appendix of this Proposed Decision is an end-user, it need only establish that it was an ultimate consumer of EDG gasoline and/or No. 2 distillates during the consent order period to receive its maximum refund amount.

(B) Distribution of the Remainder of the Consent Order Funds Attributable to EDG's Sales of Gasoline and No. 2 Distillates

In the event that money remains after all refund claims from the EDG fund have been analyzed, those funds in that account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session., Cong. Rec. H11319-21, (Daily E. October 17, 1986).

III. Conclusion

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any potential claimants to file a claim. In addition to publishing copies of the proposed and final decision in the **Federal Register**, copies will be provided to the EDG customers listed in the Appendix of this Proposed Decision.[5] Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Hearings and Appeals within 30 days of the publication of this Proposed Order in the **Federal Register**.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by E.D.G., Inc., pursuant to the Consent Order executed on December 17, 1979, will be distributed in accordance with the foregoing decision.

APPENDIX

Identified purchasers	Potential refund [1]
Al-Sal Oil	$46,512
Anco Oil Company	12,268
Brokers Petroleum Inc	84,541
J.E. Dewitt	78,123
Dunbar Texaco	752
Dytron Development Company	36,258
Fletcher Oil Co	170
Fisher Motor Company	35,713
Golden Arrow Dairy	98,303
H.E. Graham	156,430
Greinke Petroleum Corp	1,511
Archie Jacobs	486
Jessups Drive-In Dairy	602
Keen, Inc	29,081
L&S Service	2,165
Lockmann Farms	422
Mag Oil Company	2,296
Marlex Petroleum Company	65,724
William L. Martin II	3,818
Nickey Petroleum Company	2,792
Payless Oil Company	3,897
Pesky	635
Petromar Distributors	111,645
Quick Save	5,673
Reliance Dairy	8,819
Rocky Home Dairy	61,701
Santa Fe Service	346
Bob Smith Oil Company	10,213
Total	860,896

[1] Each identified purchaser's potential refund was calculated by adding the amount it was allegedly overcharged by EDG to its prorated share of the interest that had accrued up until the date of remittance. This amount does *not* include a prorated share of the interest that has accured on the escrow account since the date of remittance.

[5] The addresses of the EDG customers listed in the Appendix were obtained from DOE audit files.

[FR Doc. 88-6456 Filed 3-23-88; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $163.3 million, plus accrued interest, in alleged crude oil violation amounts obtained from Shell Oil Company. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by June 30, 1988, and should reference Case Number KFX-0048 and be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 20 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute the portion of the funds obtained from Shell Oil Company that are attributable to alleged crude oil overcharges. These funds were obtained from Shell as a result of a consent order entered into by the DOE and Shell on March 26, 1987. The funds are being held in an interest-bearing escrow account pending distribution by the DOE. Procedures for distribution of the refined product pool of the Shell consent order funds will be established at a future time.

The OHA has decided to distribute the crude oil overcharge funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds of eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for crude oil refunds must be filed by June 30, 1988, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again. Applications for refund from the refined product pool should not be submitted at this time.

Date: March 15, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

March 15, 1988.

Name of Case: Shell Oil Company.
Date of Filing: April 29, 1987.
Case Number: KFX-0048.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR section 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On April 29, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Shell Oil Company under the terms of a March 26, 1987 consent order with Shell. Pursuant to the terms of the consent order, Shell remitted a total of $183,667,955.78 to the DOE for distribution in accordance with 10 CFR Part 205, Subpart V.[1] An additional $9,461,960.10 in interest had accrued on that amount as of February 29, 1988. This Decision and Order establishes procedures for distributing the portion of those funds attributable to alleged crude oil violations.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement Subpart V procedures with respect to the monies received from Shell and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued its Modified Statement of Restitutionary Policy concerning crude oil overcharges. 51 FR 27899 (August 4, 1986) ("the MSRP"). The MSRP, which was issued as a result of a court-approved Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.), provides that crude oil overcharge monies will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of crude oil and refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737. The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the MDL 378 escrow at the time of the settlement.

These procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court

[1] This amount consists of the principal consent order amount of $180,000,000 plus $3,667,955.78 in interest which accrued prior to Shell's payment to the DOE. For accounting purposes, the interest remitted by Shell shall shall be considered as additional principal and shall be divided proportionately between the crude oil and refined product pools discussed below.

concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, 3 Fed. Energy Guidelines ¶ 26,587 at 26,826 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 26,827. The States have appealed the latter ruling. *In Re: The Department of Energy Stripper Well Exemption Litigation*, No. 10–76 (Temp. Emer. Ct. App. filed Nov. 5, 1987).

II. The Proposed Decision and Order

On December 10, 1987, the OHA issued a Proposed Decision and Order tentatively establishing procedures for the distribution of the $183,667,955.78 received from Shell, plus accrued interest. *Shell Oil Company*, 52 FR 47967 (December 17, 1987). In that Decision, we proposed to divide the consent order funds into two pools: a refined product pool consisting of $20,407,550.64 plus interest, and a crude oil pool of $163,260,405.14 plus interest. The refined product pool would be made available for distribution to purchasers of Shell refined petroleum products who demonstrate that they were injured as a result of Shell's alleged regulatory violations. We further proposed that the crude oil pool would be distributed in accordance with the MSRP and the April 1987 Notice. In this Decision, we will establish procedures for distributing the Shell crude oil pool only. Procedures for distributing the refined product pool will be issued at a future time.

Pursuant to the MSRP, the OHA proposed in *Shell* to reserve initially 20 percent of the crude oil pool for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds, would be distributed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided equally between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In *Shell*, the OHA proposed to require applicants for refunds from the crude oil pool to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The Proposed Decision stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a per gallon refund amount derived by dividing the amount of funds in the crude oil pool by the total consumption of petroleum products in the United States during the period of price controls. Finally, the OHA proposed to combine the Shell crude oil volumetric refund amount with all of the volumetric refund amounts obtained in each crude oil refund proceeding implemented to date under the MSRP. Comments were solicited regarding the tentative distribution process set forth in the Proposed Decision.

III. Discussion of the Comments Received

In response to the *Shell* Proposed Decision, the OHA received comments from the following: a group of 29 States and Territories of the United States ("the States"); a group of 43 ocean carriers and foreign air carriers; Philip P. Kalodner as counsel for six electric utilities, 14 shipping companies and five pulp and paper manufacturers; and the Controller of California ("the Controller").[2] The comments received from the various parties are nearly identical to those received and discussed in *Ernest E Allerkamp*, 17 DOE ¶ 85,079 (1988); *Berry Holding Company*, 16 DOE ¶ 85,405 (1987); and *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). Our discussion of the comments will therefore be brief.

The States and the Controller have submitted comments concerning the presumption of injury for end-users proposed in *Shell* and established in all crude oil proceedings implemented under the MSRP. These commenters correctly point out that the end-user presumption is rebuttable, and they request that the OHA emphasize in this Decision the rebuttable nature of the presumption. However, the States' argument that the presumption of injury can be rebutted merely by the presentation of any evidence which bears upon the presumption is erroneous. As we stated in *Allerkamp*, the claimants' burden of proof is eased by the presumption. If an interested party submits evidence to rebut the presumption of injury, we must first determine whether the evidence submitted is relevant to the issue. If the evidence is relevant and sufficient to rebut the presumption, the claimant has the burden of coming forward with further evidence of injury. However, if we find the evidence submitted to rebut the presumption to be insufficient, a refund to the end-user can be approved, based upon the weight of the presumption, without requiring the end-user to submit further evidence of injury. *Allerkamp*, 17 DOE at 88,173.

We are similarly unpersuaded by the States' contention that econometric evidence should be used to calculate the percentage of alleged crude oil overcharges that were absorbed by refiner, resellers and retailers, and that any refunds to end-users should be reduced by that amount. As we noted in *Allerkamp*, this plan would unnecessarily delay the Subpart V refund process for an extended period of time and needlessly complicate the calculation of refunds. *Id.* at 88,173. In contrast, the "full parity" approach set forth in the April 1987 Notice and in *Allerkamp* provides a simple, balanced and fair method for calculating refunds. Under the "full parity" method, the numerator of the volumetric formula includes only $985 million of the $1.4 billion in the MDL escrow at the time of the Settlement Agreement. The $415 millon refunded to refiners, resellers and retailers, which represents the total amount of upstream absorption for all crude oil overcharges, is not included. Thus, the numerator excludes the amount of injury attributed to those intermediaries in the distribution chain. No further reductions of refunds to qualified end-users will be necessary.

None of the comments received challenges the manner in which the volumetric for the Shell crude oil pool was calculated. However, a number of the commenters again discussed the volumetric calculations made in *Allerkamp*. In their comments on the *Shell* Proposed Decision, the States do not contest the OHA's addition of $985 million to the numerator of the volumetric formula made in *Allerkamp* except to note that they have appealed to the Temporary Emergency Court of Appeals that part of the district court's opinion denying the States' motion on this issue. The States also recommend that the OHA "refrain from distributing any refunds based on a formula which includes monies not in the custody of the DOE until the issue of the proper volumetric refund formula is finally decided." Comments of States at 9. However, as we have stated previously, the OHA is not required to delay granting refunds to qualified claimants

[2]Both the ocean and air carriers and Mr. Kalodner's clients are potential recipients of crude oil refunds. They will be referred to collectively as the "claimant commenters."

while the States, who already have obtained sizeable payments of crude oil violation amounts under Subpart V, carry on a potentially lengthy appellate process. *Allerkamp*, 17 DOE at 88,173 n. 5

The claimant commenters endorse and approve of the use of the full parity approach to calculating crude oil refunds. However, Mr. Kalodner suggests that the numerator of the volumetric formula be increased to reflect certain additional amounts of crude oil monies. Theses amounts include the following: $100 million in crude oil overcharge funds distributed to the states and territories by the DOE in February 1983 pursuant to Section 155 of the Further Continuing Appropriations Act of 1982, Pub. L. No. 99–377 (the Warner Amendment); $100 million in crude oil overcharge funds distributed to the states and federal government pursuant to the stipulation and order of dismissal in *Diamond Shamrock Refining & Marketing Co. v. Standard Oil Co.*, No. C2–84–1482 (D. Ohio May 30, 1986); and certain other funds previously recovered by the United States, even if those funds had been distributed to the federal government prior to the Settlement Agreement. We previously discussed and rejected Mr. Kalodner's arguments in support of an upward adjustment to the numerator of the volumetric formula in *Allerkamp*. As we noted in that Decision, the remedy fashioned in *Diamond Shamrock* was distinct from that embodied in the Settlement Agreement. *Allerkamp*, 17 DOE at 88,175. In addition, both the MSRP and the Settlement Agreement apply prospectively only and therefore cannot govern funds distributed prior to the court's approval of the Settlement Agreement and the promulgation of the MSRP, as Mr. Kalodner suggests.

The commenting parties make a number of other recommendations concerning the size of the reserve for crude oil claimants and the process of analyzing and paying refund claims. These comments appear to reflect a concern on the part of the claimant commenters that there may not be sufficient funds to pay all valid claims. The ocean and air carriers recommend that the OHA retain the entire Shell crude oil pool "until such time as it is mathematically certain that full refunds to claimants can be made," and that the OHA use "whatever portion of the total Shell crude oil pool proves necessary to assure complete restitution." Comments of ocean and air carriers at 4. We will not reserve more than 20 percent of the Shell crude oil pool for payment of claims. This amount will be sufficient for that purpose, and the claimant commenters' concern that additional funds will be needed to pay all valid claims is unwarranted. Furthermore, the Settlement Agreement permits only downward adjustment of the reserve from the initial 20 percent figure. *Settlement Agreement* at IV.B.6.

We are similarly unpersuaded by Mr. Kalodner's recommendation that the analysis of individual claims filed by the states and federal government as end-users be deferred until "full parity" refunds are made to successful, non-governmental claimants. Kalodner comments at 4. The OHA will not unnecessarily delay a refund proceeding, 10 CFR 205.288, and we see no reason to give priority to one refund applicant over another. Even if Mr. Kalodner were to show that the delay is necessary, the present proceeding is not the proper forum for his argument. If Mr. Kalodner wishes to object to a specific applicant's claim, he may file comments in the case which considers that claim. 10 C.F.R. § 205.284(b).

IV. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $163.3 million in alleged crude oil violation amounts covered by this Decision, plus the $9.5 million in interest which had accrued on that amount as of February 29, 1988, should be distributed in accordance with the crude oil refund procedures previously discussed.[3] As noted in the *Shell* Proposed Decision, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $32.7 million plus interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to Subpart V. *MAPCO Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and demonstrate that they were injured. *See id.* Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. End-users or ultimate consumers of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. *Id.* The end-user presumption of injury is rebuttable, however. *Berry*, 16 DOE at 88,797. If an interested party submits evidence which is of sufficient weight to rebut the end-user presumption, the applicant will be required to produce further evidence of injury.

Resellers and retailers of petroleum products must submit detailed evidence of injury, and may not use presumptions of injury established by the OHA in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, Fed. Energy Guidelines ¶ 90,507 (June 19, 1985), and the OHA intends to utilize the final and April 1, 1985 draft reports in evaluating refund applications submitted under Subpart V. *See* Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, section 3003(b)(2). The presumption used in refined product cases that spot purchasers were not injured by their purchases will not be used in the crude oil overcharge area. *Tarricone*, 15 DOE at 88,897 (1987). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Settlement Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411 (1987); *Sea-Land Service, Inc.*, 16 DOE ¶ 85,496 (1987). *See In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. opinion issued December 7, 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amounts by the total consumption of petroleum products in the United States during the

[3] This Decision makes no determination regarding the distribution of the refined product pool. Applications for Refund from the refined product pool based on purchases of Shell products therefore should *not* be submitted at this time.

period of price controls.[4] In paying claims, we will combine all of the volumetric refund amounts obtained in each crude oil refund proceeding implemented to date under the MSRP. The volumetric refund amount calculated prior to addition of the *Shell* crude oil funds was $0.0007634495. *Allerkamp*, 17 DOE at 88,176 n. 10. The volumetric refund amount calculated from the Shell crude oil pool is $0.000080782. The total per-gallon refund amount is therefore $0.0008442315. Successful applicants will also receive an appropriate portion of the interest which accrues of the crude oil funds.

A crude oil refund applicant will be required to submit only one application for all crude oil overcharge amounts for which procedures have been implemented to date. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. To apply for a crude oil refund, applicants claiming a refund based on a purchase volume of less than 300,000 gallons should submit the information in the suggested format attached as an Appendix to this Decision. Applicants claiming a refund based on a volume of 300,000 gallons or more should submit all of the information in the suggested format of the Appendix and include all of the information outlined below:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. that it has not filed for a refund from any of the escrow accounts established pursuant to the Settlement Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass the overcharges through to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its retail customers.

All applications should be typed or printed, clearly labelled "Application for Crude Oil Refund," submitted in duplicate and mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue S.W., Washington DC 20585.

The volumetric refund amount will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for present or future amounts. Notice of additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $163.3 million plus interest in alleged crude oil violation amounts subject to this Decision, or $130.6 million plus interest, should be disbursed equally to the states and federal government for indirect restituion. The accrued interest on the 80 percent portion of the crude oil pool comes to approximately $6.8 million. The total amount to be disbursed to the states and federal government pursuant to this determination is therefore $137.4 million.

Accordingly, we will direct the DOE's Office of the Controller to segregate the $137.4 million available for disbursement to the states and federal government and transfer one-half of that amount, or $68.7 million into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In the near future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Each individual state's percentage share of the funds to be disbursed is set forth in Exhibit H to the Settlement Agreement and is based on each state's consumption of petroleum products during the period of price controls. When disbursed, these funds will be subject to the same use limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Shell Oil Company pursuant to the Consent Order executed on March 26, 1987 may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than June 30, 1988.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $171,752,989.57 from the Shell Oil Company subaccount, Consent Order Number RSHA00001Z, pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $68,701,195.83 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from February 29, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $68,701,195.83 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from February 29, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $34,350,597.91 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues from February 29, 1988 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants," Number 999DOE007Z.

Dated: March 15, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

BILLING CODE 6450-01-M

[4] We will use the estimate that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Moutain Fuel*, 14 DOE at 88,868 n.4 (1986).

Appendix

RF272-_____

DOE Use Only

Suggested Format For End-users
SUBPART V CRUDE OIL REFUND APPLICATION

1. Name of Applicant Firm: _____

Address: _____

_____

Name(s) under which Firm did business between August 19, 1973 and January 27, 1981: _____

_____

2. To whom should refund check be made out? _____

Address to which check should be sent: _____

_____

Contact Person: _____

Daytime Telephone: (_____) _____

3. Describe the nature of your business. How did you use the petroleum products? _____

_____

_____

4. (a) Total gallonage for which refund is requested (from page 2): _____

(b) Please identify the source of records used to compute this figure (e.g. invoices, tax records). _____

If you estimated your purchases, please explain how you arrived at the estimates. Use additional sheets if necessary.

_____

_____

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief, and that neither I, my parent firm, nor any affiliates have elsewhere waived their right to a refund.

_____ Date

_____ Signature of Applicant

_____ Title

SCHEDULE OF YEARLY PURCHASES OF REFINED PETROLEUM PRODUCTS (IN GALLONS)

NAME OF APPLICANT: _____

	GASOLINE	MIDDLE DISTILLATES	RESIDUAL FUEL	PROPANE	MOTOR OIL/ GREASE	OTHER (SPECIFY)
Aug. 19 through Dec. 1973	_____	_____	_____	_____	_____	_____
1974	_____	_____	_____	_____	_____	_____
1975	_____	_____	_____	_____	_____	_____
1976	_____	_____	_____	_____	_____	_____
1977	_____	_____	_____	_____	_____	_____
1978	_____	_____	_____	_____	_____	_____
1979	_____	_____	_____	_____	_____	_____
1980	_____	_____	_____	_____	_____	_____
Jan. 1981	_____	_____	_____	_____	_____	_____
TOTALS:	_____	_____	_____	_____	_____	_____

GRAND TOTAL FOR ALL PRODUCTS (record on page 1 of Application) _____

[FR Doc. 88-6457 Filed 3-23-88; 8:45 am]
BILLING CODE 6450-01-C

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3353-7]

Approvals of PSD Permits; Region VI

Notice is hereby given that the Environmental Protection Agency (EPA), Region VI, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-701—CSX Oil and Gas Corporation: This permit, issued on October 9, 1987, authorizes the modification of the existing natural gas processing plant located on Ranch Road 1962, approximately 20 miles southeast of Tilden, McMillen County, Texas.

2. PSD-TX-670—Hansa Manufacturing Company: This permit, issued on October 28, 1987, authorizes the construction of hydrocarbon processing facilities to be located on FM Road 1405, approximately 1500 feet north of Sulton Gully in Baytown, Chambers Country, Texas.

3. PSD-TX-657—Southwest Texas State University: This permit, issued on November 6, 1987, authorizes the construction of a new central heating and utility plant at the State University located at Live Oak and Guadalupe Streets in San Marcos, Hays County, Texas.

4. PSD-TX-724—Harmon Operating Company, Inc.: This permit, issued on December 22, 1987, authorizes the construction of a gas treating plant to be located on FM Road 429, approximately 6.5 miles northeast of Terrell, Kaufman County, Texas.

5. PSD-TX-688—Fina Oil and Chemical: This permit, issued on December 22, 1987, authorizes the construction of two gas-fired turbine cogenerations units at the existing refinery located at the intersection of Highway 366 and 32nd Street in Port Authur, Jefferson County, Texas.

6. PSD-TX-716—Encogen One Partners, Ltd.: This permit, issued on December 31, 1987, authorizes the construction of a 200 MW gas turbine cogeneration facility at the U.S. Gypsum plant located off Highway 20, approximately one mile northeast of Sweetwater, Nolan County, Texas.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. A petition for review of Encogen One Partners (PSD-TX-716) was received by the Region VI Administrator on February 3, 1988. It was withdrawn on February 17, 1988. No other petition for review of these permits has been filed with the Administrator.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of March 24, 1988. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or crimimal proceedings brought by EPA to enforce the requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Date: March 3, 1988.

Robert E. Layton Jr.,

Regional Administrator, Region VI.

[FR Doc. 88-6444 Filed 3-23-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3353-6]

Proposed Administrative Settlement at Pollution Abatement Services Site; Veterans Administration Medical Center, Canandaigua, NY, et al.

AGENCY: Environmental Protection Agency.

ACTION: Proposed administrative settlement at pollution abatement services site.

SUMMARY: The United States Environmental Protection Agency ("EPA") Region II Office and the State of New York have entered into a proposed Administrative Settlement with two parties at the Pollution Abatement Services ("PAS") site in Oswego, New York. The proposed settlement provides that the Veterans Administration Medical Center at Canandaigua, New York ("V.A.") and Griffiss Air Froce Base ("Griffiss"), reimburse EPA and the State of New York for certain response hazardous substances at the PAS site. The purpose of this notice is to announce the proposed settlement and to announce that EPA's Region II office will receive comments relating to the proposed settlement for a 30-day period following the date of this publication.

DATE: Comments relating to the proposed settlement should be submitted in writing to the EPA Region II Office at the address below on or before April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Gregory C. Snyder, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, Room 437, New York, New York 10278, (212) 264-4928.

SUPPLEMENTAL INFORMATION: Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative settlements at hazardous waste sites. As of April 1, 1987, EPA and the State of New York have incurred a total of $12,319,551.04 in responding to conditions created by the presence of hazardous substances at the PAS site. Both V.A. and Griffiss are generators of hazardous substances to the PAS site. The proposed settlement provides for the reimbursement by V.A. and Griffiss for response costs incurred by the federal and state governments at the PAS site. The proposed settlement provides that V.A. shall reimburse the two governments $8,746.88 and that Griffiss shall reimburse the two governments $6,283.06.

The proposed settlement may be examined at the Office of Regional Counsel, EPA Region II, 26 Federal Plaza, Room 437, New York, New York, 10278. A copy of the proposed settlement can be obtained by mail from the same address.

Pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), EPA Region II will receive written comments relating to the proposed settlement for 30 days following the date of this publication. Comments should be sent to Gregory C. Snyder, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency Region II, 26 Federal Plaza, Room 437, New York, New York 10278.

Dated: March 9, 1988.

William J. Muszynski,

Acting Regional Administrator, United States Environmental Protection Agency.

[FR Doc. 88-6442 Filed 3-23-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[General Docket No. 86-336; FCC 88-67]

Inquiry Into the Scrambling of Satellite Television Signals and Access to Those Signals by Owners of Home Satellite Dish Antennas

AGENCY: Federal Communications Commission (FCC).

ACTION: Second report.

SUMMARY: This item, part of a Congressionally-requested investigation of the home satellite dish (HSD) programming market, describes and analyzes developments in that market during the past year. The Second Report, which is being transmitted to the Congress, recommends that it consider increasing the penalties for satellite signal "piracy." No additional government regulatory intervention in the HSD market is recommended.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, tele: (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report* in General Docket 86-336, FCC 88-67, Adopted February 25, 1988 and Released March 11, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Summary of Second Report

1. The Commission's *Second Report* on satellite TV signal scrambling, reviews the public interest benefits of scrambling, describes the progress of the home satellite dish (HSD) programming market during the past year, and notes the existence of a serious problem with signal "piracy"—the use of altered decoders to descramble satellite programming without payment or authorization. While criminal and civil sanctions against piracy are available (and being utilized), the penalties are relatively light. Because unchecked piracy threatens the viability of direct-to-home program distribution, the Commission recommends that the Congress consider increasing the penalties for piracy.

2. The *Second Report* points out that scrambling protects programmers from commercial theft of their services and allows them to recover compensation from all who view their copyrighted product. This is not only equitable, but also efficient, since HSD households are provided with the means to convey their preferences to programmers and to acquire the services that they desire. Scrambling thus serves the public interest by improving the operation of the market for programming and maintaining proper program production incentives.

3. Substantial progress has been made in the HSD market during the past year. Many additional programmers have scrambled their signals, all of them with the Videocipher II (VC II) system. The status of that system as the market-determined *de facto* industry standard has been confirmed. Hence, a government-mandated standard, which would also have the undesirable effect of limiting incentive to improve the technology, is unnecessary.

4. VC II decoders apparently are widely available now, in the wake of a substantial expansion of production capacity in 1987. That expansion was a market response by General Instrument Corporation (GIC), the primary VC II manufacturer, to a decoder shortage in the spring and summer of 1987.

5. As more services have scrambled their signals over the past year, a wide variety of discount program packages have been assembled. Many of them are sold on a nationwide basis, and may be ordered via toll free telephone numbers. Thus, it appeas that viewers wishing to subscribe to satellite program services can do so easily.

6. The *Second Report* analyzes HSD program prices both by examining the structure of the market and by comparing those prices with cable subscriber rates. With respect to premium services, there is vigorous rivalry among satellite cable programmers such as HBO and Showtime, SelecTV (a non-cable service), and cassette rental outlets. Also, under the current regime, entry into superstation distribution is extremely easy, so existing distributors are constrained by potential entry as well as rivalry with each other.

7. The *Second Report* reviews allegations that cable multiple system operators have exercised market power to force programmers to keep their HSD prices artificially high. While the cable market power hypothesis cannot be conclusively rejected, the Commission's investigation revealed no specific evidence to support it. The Department of Justice has an ongoing investigation of the provision of satellite programming to cable-competitive distribution systems. Furthermore, it is not clear that HSD price regulation, be it direct or indirect (*e.g.*, a prohibition of "discrimination" by programmers among alternative distributors), will be effective in checking whatever underlying cable market power that may be present. Price regulation can only address a manifestation of market power. For that reason, measures to allow entry by new competitors are likely to be more efficacious than price regulation in dealing with market power. These considerations lead to a recommendation against regulation of HSD program prices.

8. HSD households have access to virtually every satellite-delivered program service (HBO's Ku band "Festival" service is currently an exception), but certain legal and policy questions remain unresolved with respect to the provision of television broadcast programming to those households. The applicability of the cable compulsory license to HSD sales is unclear. While most superstation carriers are behaving as if the license does apply (and superstations are widely marketed to HSD households), this issue is before the courts and the Congress. Voluntary arrangements to bring network programming to unserved areas appear to be developing.

9. When the Commission adopted the initial *Report* in this proceeding (published at 52 FR 10136, Mar. 30, 1987), it directed its staff to monitor the HSD industry for one year. Pursuant to that direction, the staff prepared progress reports on the industry for the Commission in May and September of 1987 and in January of this year. The *Second Report* draws on material in the three progress reports, which are available for inspection and copying in the FCC Dockets Branch and available for purchase from the Commission's copy contractor (see above). In fulfillment of a commitment made by the Commission in the initial *Report*, this *Second Report* will be transmitted to the Congress. Although it is terminating this satellite television signal scrambling proceeding, the Commission declares its willingness to re-examine HSD market conditions if future developments warrant it.

Ordering Clauses

10. Accordingly, it is ordered, that this proceeding on satellite television signal scrambling is terminated.

11. It is further ordered, that the Secretary shall forward copies of this *Second Report* to the appropriate Committees and Subcommittees of the House of Representatives and the Senate.

Federal Communications Commission.

H. Walker Feaster, III,

Acting Secretary.

[FR Doc. 88-6317 Filed 3-23-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010689-030.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the parties to maintain rates previously established by Independent Action, in lieu of having such rates increased as part of a conference-wide General Rate Increase ("GRI"), by giving the conference manager 10 days' notice of such action prior to the effective date of the GRI. It would also restate the agreement.

Agreement No.: 202-010776-026.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would add a new agreement provision dealing with breaches of confidentiality by agreement members.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: March 21, 1988.

[FR Doc. 88-6440 Filed 3-23-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Aagreement No: 224-200102.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (GPA)
Ocean Star Container Line (Ocean)

Synopsis: The proposed agreement provides that GPA will provide Ocean with terminal services for a consolidated rate based upon an agreed upon rate per container.

By Order of the Federal Maritime Commission.

Dated: March 21, 1988.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-6441 Filed 3-23-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Bruce Bockelmann

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 8, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bruce Bockelmann;* to acquire 15 percent of the voting shares of Beecher Bancorp, Beecher, Illinois, and thereby indirectly acquire Farmers State Bank of Beecher, Beecher, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Diane M. Bricco,* to acquire 4.6 percent; Lawrence J. Gentine, to acquire 2.3 percent; Thomas J. Grasse, to acquire 11.3 percent; C. Reed Harvey, to acquire 5.7 percent; Michael J. Harvey, to acquire 11.3 percent; Anthony L. Jovanovich, to acquire 5.7 percent; Larry LeMahieu, to acquire 3.4 percent; Walter H. Miller, Jr., to acquire 2.3 percent; D. Tod Pauly, to acquire 11.3 percent; Charles E. Rohde, to acquire 4.6 percent; Schabo Materials, Inc., William D. Murphy, to acquire 22.7 percent; Larry Van Akkeren, to acquire 3.4 percent; Gordon Veldboom, Jr., to acquire 5.7 percent; and Neil H. VanDerJagt and Don G. VanDerJagt to acquire 5.7 percent of the voting shares of Cameron Investment Company, Inc., Cameron, Wisconsin, and thereby indirectly acquire Bank of Cameron, Cameron, Wisconsin.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ralph and Bill Ball,* to acquire 3 percent; James S. Brock, to acquire 3

percent; Marvin Moore, to acquire 3 percent; Gary Proffitt, to acquire 3 percent; Larry Sankey, to acquire 3 percent; and Russell Wilkey, to acquire 3 percent of the voting shares of Quivira Banc Shares, Inc., Sterling, Kansas, and thereby indirectly acquire First National Bank, Sterling, Kansas. All of the notificants reside in Sterling, Kansas.

Board of Governors of the Federal Reserve System, March 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6372 Filed 3-23-88; 8:45 am]

BILLING CODE 6210-01-M

CommunityBanc, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 14, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *CommunityBanc, Inc.*, Crooksville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Crooksville Bank, Crooksville, Ohio.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FS BancShares, Inc.*, Markesan, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers State Bank, Markesan, Wisconsin.

2. *Vogel Bancshares, Inc.*, Orange City, Iowa; to become a bank holding company by acquiring 90.33 percent of the voting shares of Sioux County State Bank, Orange City, Iowa.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Porter Bancorp, Inc.*, Pleasureville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Central Bank of North Pleasureville, Pleasureville, Kentucky.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.*, Kansas City, Missouri; to acquire 100 percent of the voting shares of Commerce Bank-Nixa, N.A., Nixa, Missouri.

Board of Governors of the Federal Reserve System, March 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6373 Filed 3-23-88; 8:45 am]

BILLING CODE 6210-01-M

CoreStates Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to engage through Signal Financial Corporation, Pittsburgh, Pennsylvania, in acting as agent for the sale of insurance, directly related to an extension credit by Signal and its finance subsidiaries, that is limited to ensuring the repayment of the outstanding balance due on extensions of credit in the event of loss or damage to any property used as collateral for the extension of credit pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. In addition, Applicant proposes to expand the geographical service area to include Florida, New Jersey and Delaware.

Board of Governors of the Federal Reserve System, March 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-6374 Filed 3-23-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Proposed Review Criteria and Program Announcement for Grants for Centers for Excellence

The Health Resources and Services Administration announces that applications for Fiscal Year 1988 Grants for Centers for Excellence are being accepted under the authority of section 788A of the Public Health Service Act, as established by Pub. L. 100-97, the Excellence in Minority Health Education and Care Act, and amended by the Department of Health and Human Services Appropriation Act, 1988, and invites comments on the proposed review criteria.

The Department of Health and Human Services Appropriations Act, 1988, as contained in Pub. L. 100–202, specifies that any university which awards a graduate degree in the health professions and which has a majority enrollment of minority students is eligible to apply and compete for a grant. It is estimated that there are 15 universities which meet these eligibility requirements and are eligible to apply for a grant. The legislative history clarifies that the intent of this program is not to duplicate support for schools which are directly funded by Federal appropriation, such as Howard University.

As used in this notice, "graduate degree in the health professions" means a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of optometry, doctor of podiatry or an equivalent degree, doctor of veterinary medicine or an equivalent degree, a masters or doctoral degree in public health or an equivalent degree, a doctor of chiropractic or an equivalent degree, or a masters or doctoral degree in health administration or an equivalent degree, awarded, respectively, by an accredited public or nonprofit school of medicine, dentistry, osteopathy, pharmacy, optometry, podiatry, veterinary medicine, public health or chiropractic or an accredited graduate program in a public or nonprofit private institution.

"Minority" means an individual whose race/ethnicity is classified as American Indian or Alaska Native, Asian or Pacific Islander, Black, or Hispanic.

"Majority enrollment of minority students" means an enrollment of minority students exceeding 50 percent of the total number of students enrolled in the university.

Section 788A specifies that Grants for Centers for excellence may be used by a grantee school for the following purposes:

(1) To develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals;

(2) To improve the capacity of the school to recruit and retain faculty;

(3) To provide improved access to the library and information resources of the school;

(4) To establish, strengthen, or expand programs to enhance the academic performance of students in the school;

(5) To establish, strengthen, or expand programs to increase the number and quality of applicants for admission to the school; and

(6) To develop curricula and carry out faculty training programs in order to enable the school to become, for the nation's health care providers, a resource with respect to the health problems of minority communities, such as higher infant mortality rates and higher incidences of acquired immunodeficiency syndrome (AIDS).

The Health Resources and Services Administration proposes to use the criteria listed below to evaluate the relative merit of applications.

(1) The degree to which the applicant can arrange to continue the proposed project beyond the Federally funded project period.

(2) The degree to which the proposed project meets three or more of the purposes stated in the legislative authorization (see above);

(3) The relationship of the objectives to the implementation plan to achieve institutional improvements;

(4) The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

(5) The adequacy of the staff and faculty to carry out the program;

(6) The soundness of the budget for assuring effective utilization of grant funds;

(7) The technical merit of the project as determined by the following elements;

a. Delineation of specific objectives which are consistent with the legislative purposes; where applicable, objectives should be measurable (e.g. improvement in student and faculty attrition rate);

b. Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives; time frame for implementing the activities, projects or services; target population; responsibile staff; and facilities which will be used to accomplish the objectives;

c. Description of a comprehensive evaluation plan inclusive of all objectives and activities;

(8) The number of individuals who can be expected to benefit from the project; and

(9) The overall impact the project will have on strengthening the school's capacity to train minority health professionals and increase the supply of minority health professionals available to serve minority populations in underserved areas.

Approximately $9.5 million is expected to be available for competing grants in Fiscal Year 1988. It is expected that 4–6 grants averaging $1.0 to $2.0 million will be supported with these funds.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6880.

Questions regarding programmatic information should be directed to: Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–09, Rockville, Maryland 20857, Telephone: (301) 443–2100.

A technical assistance conference will be held on April 11 and 12 at the following location: Health Resources and Services Administration, Parklawn Building, Conference Room C, 5600 Fishers Lane, Rockville, Maryland 20857.

To receive consideration, applications must meet the deadline of May 4, 1988, which means they must either be:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form, PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget. The supplemental instructions have been submitted for OMB approval.

This program is not yet listed in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Interested persons are invited to comment on the proposed review criteria. Normally, the comment period would be 60 days, however, due to the need to implement this new program in Fiscal Year 1988, this comment period has been reduced to 30 days. All comments received on or before April 25, 1988, will be considered before the final review criteria are established. No funds will be allocated or final selections made until a final notice including the final criteria is published.

Written comments should be addressed to: Director, Division of

Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and coying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the address above weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: February 23, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–6452 Filed 3–23–88; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Meeting of the National Cancer Advisory Board Subcommittee on Cancer Centers

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Cancer Centers, National Cancer Institute, April 26, 1988 at the Hyatt Regency O'Hare, Chicago, Illinois 60666.

The entire meeting will be open to the public from approximately 8:45 a.m. to 6 p.m. to continue the Subcommittee's review of the Cancer Centers Program and to develop plans for a workshop to be held at a later date. Attendance by the public will be limited to space available.

Mrs. Winifred J. Lumsden, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and rosters of the Subcommittee members, upon request.

Ms. Judith Whalen, Executive Secretary, Subcommittee on Cancer Centers, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 11A–19, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5515) will furnish substantive program information, upon request.

Dated: March 14, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6497 Filed 3–23–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, May 6, 1988, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9 a.m. to adjournment on May 6 to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6498 Filed 3–23–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, May 6–7, 1988, at the Hilton Hotel, Grand and Royal Salons, 300 Paradise Road, Las Vegas, Nevada, 89109.

The entire meeting, from 1:00 p.m. to 4:00 p.m. on May 6, and from 8:30 a.m. to adjournment on May 7, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1989. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6494 Filed 3–23–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of Dental Research Programs Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, June 7–8, 1988, in Building 30, Room 117, National Institutes of Health, Bethesda, Maryland, from 9:00 a.m. to recess on June 7 and from 9:00 a.m. to adjournment on June 8, 1988.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496–7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845—Dental Research Institutes, National Institutes of Health)

Dated: March 18, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–6493 Filed 3–23–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-08-4410-08]

Burley District Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on June 23, 1988. The meeting will convene at 10:00 am in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) BLM/State land exchange program; and (2) hazardous waste sites. Information items are: (1) City of Rocks update; (2) RNA's/ACEC's update; (3) isolated tracts update; (4) drought situation.

This meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will start at 11:45 am. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed.

Minutes of the Council meeting will be maintained in the District Office and will be available for the public inspection during regular business hours.

DATE: June 23, 1988.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318.

FOR FURTHER INFORMATION CONTACT: John Davis, Burley District Manager, (208) 678-5514.

Dated: March 18, 1988.

John S. Davis,

District Manager.

[FR Doc. 88-6478 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-060-08-4410-11]

Coeur d'Alene District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 92-463, that a meeting of the Coeur d'Alene District Advisory Council will be held on Monday, April 25, 1988. The meeting will begin at 9:00 a.m. and will be held at Templin's Hotel, 414 E. 1st Avenue, Post Falls, Idaho

The agenda items are: Election of officers; general briefings on the Kellogg gondola project; the Potlatch/BLM/Fish and Wildlife Service land exchange; proposed Areas of Critical Environmental concern; timber trespass; land tenure adjustment planning guidelines; and anadromous fish habitat.

The meeting is open to the public. Interested persons may make oral statements to the Council betweeen 11:30 a.m. and 12:00 noon, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District manager, Coeur d'Alene District Office, 1808 N. 3rd Street, Coeur d'Arlene, Idaho 83814 by April 20, 1988.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

Date: March 16, 1988.

Fritz U. Rennebaum,

District manager.

[FR Doc. 88-6397 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[OR-030-08-4322-02-GP8-089]

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting; Vale District Grazing Advisory Board.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that a meeting of the Vale District Grazing Advisory Board will be held April 29, 1988.

The agenda for the meeting will include: Recent changes in grazing regulations; consideration and recommendation on the use of Range Improvement Funds (8100) for project maintenance inspections; noxious weed control; status report on wild horse gatherings in Vale District; report on recent livestock impoundment actions; policy guidelines for addressing drought conditions on range lands; report on riparian management program; status report on actions relating to the Whitehorse Allotment Management Plan; proposed name changes for Northern and Southern Resource Areas and proposed administrative boundary adjustments between these two Resource Areas.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 1:00 p.m. the day of the meeting.

Summary minutes of the Board's meeting will be maintained in the district office and will be available during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The meeting will begin at 9:00 a.m. April 29, 1988.

ADDRESS: The meeting will take place in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, OR 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 88-6399 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-33-M

[U-61271]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-61271 for lands in Uintah County, Utah, was timely filed and required rentals and royalties accruing from October 1, 1987, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-61271 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective October 1, 1987, subject to the original terms and conditions of the

lease and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 88-6407 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-940-08-4212-13; PHX-080572]

Reconveyed Land Opened to Private Exchange Application; Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 160 acres of reconveyed land in Maricopa County to Private Exchange application.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241-5534.

SUPPLEMENTARY INFORMATION: On March 2, 1949, as authorized under section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

Gila and Salt River Meridian, Arizona

T. 1 S., R. 2 W.;
Sec. 32, SE¼

The area described contains 160 acres in Maricopa County.

The land described above has been determined suitable for disposal by private exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from appropriation under all other public land laws. The mineral estate was not reconveyed to the United States and therefore, will not be subject to entry under the mining or mineral leasing laws.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-6413 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-32-M

[CO-050-4212-11; C-42678]

Reality Action; Public Lands, Boulder County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purposes classification and application for patent of public lands in Boulder County, Co.

SUMMARY: The following public land has been examined and found suitable for classification and sale under the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 U.S.C. 869):

Sixth Principal Meridian, Colorado

T. 1 N., R. 71 W.;
Sec. 9: Lot 16.
Containing 39.29 acres.

Boulder County has applied for patent to this land so that it can be included in their Fourmile Canyon Park. The land has been and will continue to be used for hiking and dispersed recreation. The land is physically suited to the proposed use and is not of national significance. Since the land is valuable for a local government program it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the R&PP Act. This action is consistent with local and Federal government plans, programs and policies. Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of non compliance with the terms of the patent, title to the land shall revert to the United States.

The classification of this land will segregate it from all appropriation except as to applications under the mineral leasing laws and the R&PP Act. If patent does not issue, segregation will terminate eighteen (18) months from the date of this notice, or upon publication of a notice of termination, whichever occurs first.

DATE: For a period of up to and including May 9, 1988, interested parties may submit comments to: District Manager, Canon City District Office, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, CO 81212. Any adverse comments will be evaluated by the District Manager who may modify or vacate this classification.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Canon City District Office listed above; or at the Northeast Resource Area Office, Bldg. 41, Denver Federal Center, Denver, CO 80225; or by calling the Northeast Area Realty Specialist, Priscilla McLain, at (303) 236-4399.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-6479 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-11; C-45647]

Realty Action; Sunshine Cemetery, Boulder County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose classification, C-45647 (Sunshine Cemetery, Boulder County, CO).

SUMMARY: The following public land has been examined and found to be suitable for public use. It is hereby classified for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869), and the regulations thereunder (43 CFR 2740).

Sixth Principal Meridian, Colorado

T. 1 N., R. 71 W.;
Sec. 8: Lot 184.
Containing 1.28 acres.

Sunshine Cemetery Association, a non-profit organization, has applied for the land. They propose to manage it as a public cemetery for the local community of Sunshine. The land has been used as a cemetery for over 100 years without any authorization. Transferring it to the Association will legalize this use and provide for maintenance of the cemetery, thus preserving its local historical values. The land is physically suitable for this use and is not of national significance. This action is consistent with local and Federal plans, programs and policies. Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of non-compliance with the terms of the patent, title to the land shall revert to the United States.

The classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. If lease or patent does not issue, segregation will terminate eighteen (18) months from the date of this notice, or upon publication of a notice of termination, whichever occurs first.

DATES: For a period of up to and including May 9, 1988, interested parties may submit comments to the District Manager, Bureau of Land Management, 3170 East Main Street, P.O. Box 311, Canon City, CO 81212. Any adverse comments will be evaluated by the District Manager, who may modify or vacate this classification.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Canon City District Office (address above) or the Northeast Resource Area Office, P.O. Box 25047, Bldg. 41, Denver, CO 80225 (303) 236-4399.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-6480 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-08-4220-11; I-22300]

Realty Action; Issuance of Land Exchange Conveyance Documents; Idaho

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Fay H. Andrews of Salmon, Idaho 83467, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 20 N., R. 24 E.
Sec. 29, S½SW¼NW¼;
Sec. 30, SE¼SE¼NE¼, SW¼SW¼SW¼NE¼, SW¼NE¼NW¼.

Comprising 42.50 acres of public land.

In exchange for these lands, the United States acqired the following-described lands:

Boise, Meridian, Idaho

T. 19 N., R. 23 E.
Sec. 24, SE¼SW¼.

Comprising 40.00 acres of private land.

The purpose of the exchange was to acquire private land that contains valuable wildlife habitat, a one-quarter mile stretch of riparian habitat as well as excellent rangeland with potential for good water developments.

The values of the Federal public land and the non-federal land in the exchange was appraised at $4611.25 and $4140.00 respectively. An equalization payment of $471.25 was paid to the United States by Fay H. Andrews.

Date: March 17, 1988.

Charles J. Haszier,

Deputy State Director for Operations.

[FR Doc. 88-6395 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-08-4212-13; N-48171]

Realty Action; Exchange; Lyon County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed exchange.

SUMMARY: The following described federal land comprising 320 acres in Lyon County, Nevada, has been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 11 N., R. 23 E.,
Sec. 1, S½, SE¼.
Sec. 12, W½, NE¼, SE¼.

The federal government is offered the following described 408.49 acres of non-federal land in Carson City, Nevada, by the Trust for Public Land:

Mount Diablo Meridian, Nevada

T. 15 N., R. 19 E.,
Sec. 3, Lots 1 and 2 of the NE¼, Lot 1 of the NW¼, SW¼.

The purpose of this exchange is to acquire non-federal land within and adjacent to the boundary of the Toiyabe National Forest. This proposed exchange will be based on equal value determined by fair market value appraisals and may ultimately involve less than the total acreage described for either federal or non-federal land.

This exchange is consistent with Bureau of Land Management land use planning. The federal land is not needed for any federal program. The land has previously been identified for transfer from federal ownership via public sale. Two unsuccessful sales were held.

There is no known value for minerals in the federal land. It is expected that the mineral estate will be conveyed with the surface estate.

Patent, if and when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Patent will also be subject to the following depending upon which parcels of federal land are conveyed:

1. A right-of-way, approximately 150 feet in width along the north boundary of section 12 and the south boundary of section 1, granted to Nevada Highway Department for public access (Nev-054978).

2. A right-of-way for a material site granted to Nevada Highway Department (Nev-055377).

3. A right-of-way 50 feet in width for an access road granted to Ralph T. Casebolt, Inc. (N-31384).

4. A right-of-way 10 feet in width for a buried telephone cable granted to Continental Telephone Company (N-37513).

5. A right-of-way 10 feet in width for a buried telephone cable granted to Continental Telephone Company (N-39943).

Upon publication of this Notice of Realty Action in the **Federal Register**, the federal land will be segregated from all appropriations under the public land laws, including the mining laws, except exchanges. The segregative effect of the notice shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. After acquisition, the non-federal land will become a part of the National Forest System.

Detailed information concerning the exchange is available for review at the Forest Supervisor's Office, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada, and at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, at the aforementioned address. Any adverse comments will be evaluated by the District Manager and forwarded to the Nevada State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated this 18th day of March, 1988.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 88-6398 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-08-4220-10; CA 3613]

Proposed Withdrawal and Opportunity for Public Meeting; California

March 11, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has amended application CA 3613 to include an additional 5 acres of National Forest System lands to protect a fire lookout site and communication facilities. The original application was published at 41 FR 27404 and 27405 on July 2, 1976, and republished at 42 FR 37256 on July 20, 1977. This notice closes the lands for up to 2 years from location and entry under the United States mining laws, but will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before June 22, 1988.

ADDRESS: Comments and meeting requests should be sent to the California State Director, BLM, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, (916) 978–4815.

SUPPLEMENTARY INFORMATION: On December 23, 1986, the U.S. Department of Agriculture amended its application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Eldorado National Forest

T. 12 N., R. 11 E.,
Sec. 12, N½NE¼NW¼SW¼.

The area described contains 5 acres in El Dorado County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No temporary uses will be permitted during this segregative period except for those uses now under permit.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–6392 Filed 3–23–88; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–08–4220–10; CA 3613]

Partial Termination of Proposed Withdrawal and Opening of Land; California

March 11, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal of 60 acres of land requested by the Forest Service, U.S. Department of Agriculture. This action will open 60 acres of land to surface entry and mining location. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: April 20, 1988.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California, (916) 978–4815.

SUPPLEMENTARY INFORMATION: On July 2, 1976, a notice of proposed withdrawal and reservation of land for the Forest Service, U.S. Department of Agriculture, was published in the **Federal Register** at 41 FR 27404 and 27405, and republished on July 20, 1977, at 42 FR 37256. The purpose of the application was to protect a fire lookout site and communication facilities. The land is no longer needed for this purpose.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian, El Dorado National Forest

T. 12 N., R. 11 E.,
Sec. 12, NE¼SW¼NW¼, SW¼SW¼NW¼, S½SE¼NW¼, and N½NE¼SW¼.

The area described contains 60 acres in El Dorado County.

2. At 10 a.m. on April 20, 1988, the lands shall be opened to such forms of disposition as may bylaw be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes betweeen rival locators over possessory rights since Congress has provided for such determinations in local courts.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88–6393 Filed 3–23–88; 8:45 am]

BILLING CODE 4310–40–M

[ID–943–08–4220–11; I–04381, I–016372]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers proposes that two withdrawals for the Lucky Peak Dam and Reservoir Project continue for an additional 68 years, which is the estimated remaining life of the project. The lands involved, which consist of a total of 2,652.81 acres, would remain closed to surface entry and mining, but would be opened to the mineral leasing laws.

EFFECTIVE DATE: Comments on the proposal must be received by June 22, 1988.

ADDRESS: Comments should be sent to the Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

The Corps of Engineers proposes that the existing land withdrawals made by Public Land Order Nos. 1021 and 3892, be continued for a period of 68 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is located in the following-described townships and sections:

Boise Meridian

T. 2 N., R. 3 E.
Secs. 12, 13 and 14.
T. 2 N., R. 4 E.
Secs. 4, 5, 6, and 7.
T. 3 N., R. 4 E.
Secs. 8, 9, 11, 12, 14, 15, 17, 21, 22, 28, 29, 31 and 32.

The areas involved aggregate 2,652.81 acres in Ada, Boise, and Elmore Counties.

The purpose of the withdrawals is to protect the Lucky Peak Dam and

Reservoir Project. The withdrawals presently segregate the lands from operation of the public land laws, including the mining and mineral leasing laws, except for 51.04 acres withdrawn under public land order 3892, which remain open to the mineral leasing laws. Under the continuation proposal, all of the lands would be opened to the mineral leasing laws, but would remain segregated from surface entry and the mining laws.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the Preisident, and Congress, who will determine whether the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

William E. Ireland,

Chief, Realty Operations Section.

Date: March 14, 1988.

[FR Doc. 88-6394 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-GG-M

[NM-940-08-4220-11; NM NM 52389]

Proposed Withdrawal Continuation, Correction; New Mexico

Notice of Proposed Withdrawal Continuation under Serial No. NM NM 52389, 50 FR 25632, June 20, 1985, is hereby corrected as follows:

1. In the summary, second column, lines 4 and 5 read "Reclamation continue for an additional 75 years" is hereby corrected to read "Reclamation continue until December 31, 2060."

2. Third column, lines 8 and 9 read "of February 13, 1919, be continued for a period of 75 years" is hereby corrected to read "of February 19, 1919, be continued through December 31, 2060."

Larry L. Woodard,

State Director.

Dated: March 11, 1988.

[FR Doc. 88-6403 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-08-4220-11; NM NM 094367]

Proposed Withdrawal Continuation, Correction; New Mexico

Notice of Proposed Withdrawal Continuation under Serial No. NM NM 094367, 50 FR 1638-1639, January 11, 1985, is hereby corrected as follows:

1. In the summary, on page 1638, third column, lines 4 and 5 read "Reclamation continue for an additional 20 years" is hereby corrected to read "Reclamation continue until December 31, 2060."

2. Under Supplemental Information, on page 1639, first column, line 8 reads "be continued for a period of 20 years" is hereby corrected to read "be continued until December 31, 2060."

Dated: March 11, 1988.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-6404 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Development Operations Coordination Document; Mobil Exploration and Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4428, Block 326, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on March 16, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6408 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5009, Block 128, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to

be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 16, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6409 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Santa Fe International Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Santa Fe International Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 5068 and 7846, Blocks 870 and 914, respectively, Mobile Area, offshore Alabama. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Pascagoula, Mississippi.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Date: March 16, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6410 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Santa Fe International Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Santa Fe International Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 7870, 7871, and 7878, Blocks 31, 32, and 74, respectively, Viosca Knoll Area, offshore Alabama. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Pascagoula, Mississippi.

DATE: The subject DOCD was deemed submitted on March 14, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: March 16, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6411 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Sonat Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sonat Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4100, Block 239, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 17, 1988. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at

the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 17, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-6412 Filed 3-23-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-289 (Final) and 731-TA-381 and 382 (Final)]

Certain Granite From Italy and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations and with countervailing duty investigation No. 701-TA-289 (Final).

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations No. 731-TA-381 and 382 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy and Spain of certain granite,[1] provided for in item 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LIFV). The Commission also gives notice of the scheduling of a hearing in connection with these investigations and with countervailing duty investigation No. 701-TA-289 (Final), Certain Granite from Spain, which the Commission instituted on December 24, 1987. The schedules for the countervailing duty and antidumping investigations regarding imports from Spain will be identical, pursuant to Commerce's extension of the countervailing duty investigation (53 FR 2521). Commerce will make its final LTFV determinations regarding imports from Italy on or before June 20, 1988. Commerce's final countervailing duty and LTFV determinations regarding imports from Spain will be on or before June 21, 1988. The Commission will make its final injury determinations within forty-five days after receipt of Commerce's final determinations (see sections 705(a), 705(b), 735(a), and 735(b) of the act (19 U.S.C. 1671d(a), 1671d(b)), 1673d(a), and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 29, 1988.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain granite from Italy and Spain are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on July 28, 1987, by the Ad Hoc Granite Committee. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 35771, September 23, 1987).

Participation in the investigations—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the

[1] For purposes of these investigations, "certain granite" is ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and includes the following: rough sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. "Certain granite" does not include monumental stones, crushed granite, or curbing. The articles covered by these investigations are provided for in subheading 2516.11.00, 2516.12.00, 6801.00.00, 6802.23.00, and 6802.93.00 in the proposed Harmonized Tariff Schedule of the United States (USITC) Pub. 2030).

service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report—A public version of the perhearing staff report in this investigation will be placed in the public record on June 13, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on June 30, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 17, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on June 22, 1988, in room 101 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 23, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 FR 207.24) and must be submitted not later than the close of business on July 7, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 7, 1988.

A signed original and fourteen (14) copies of each submisson must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By the order of the Commission.

Issued: March 18, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-6419 Filed 3-23-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-376 (Final)]

Certain Stainless Steel Butt-Weld Pipe Fittings From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of stainless steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, provided for in item 610.89 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective September 16, 1987, following a preliminary determination by the Department of Commerce that imports of certain stainless steel butt-weld pipe and tube fittings from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 19, 1987 (52 FR 38819). Subsequently, Commerce extended the date for its final determination from November 24, 1987, to January 29, 1988 (52 FR 37815, October 9, 1987). The Commission, therefore, revised its schedule and published the revised schedule in the **Federal Register** (52 FR 39292, October 21, 1987). The hearing was held in Washington, DC, on February 9, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on March 14, 1988. The views of the Commission are contained in USITC Publication 2067 (March 1988), entitled "Certain Stainless Steel Butt-Weld Pipe Fittings from Japan: Determination of the Commission in Investigation No. 731-TA-376 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 14, 1988.

[FR Doc. 88-6420 Filed 3-23-88; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler did not participate in the final determination.

[3] Commerce determined that dumping margins on exports by Fuji Acetylene Industries Co., Ltd., were de minimis.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 467]

Exemption of Water Carrier Operations; Availability of Environmental Assessment

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: An environmental assessment has been prepared for this proceeding in which the Commission revises 49 CFR Part 1071 and removes 49 CFR Part 1072, to exempt from regulation: Water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier. The environmental assessment concludes

that the adoption of this exemption rulemaking will not significantly affect the quality to the human environment or energy conservation. The effect of the addition of these categories to categorias already exempt from Commission jurisdiction, would be minimal. The environmental assessment will be served on all parties of record. Other interested parties may receive copies of the environmental assessment from the contact person listed below.

DATE: Comments are requested and should be filed by April 22, 1988.

ADDRESS: Send an original and one copy of pleadings addressed to: (1) Ex Parte No. 467—Environmental Assessment, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Dana G. White, Telephone: (202) 275–6869.

Assistance for the hearing-impaired is available through TDD services (202) 275–1721.

Authority: 42 U.S.C. 4321, et seq.

Dated: March 18, 1988.

Noreta R. McGee,

Secretary.

[FR Doc. 88–6362 Filed 3–23–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Central Illinois Public Service Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Central Illinois Public Service Co.*, Civil Action No. 86–3359, was lodged on March 11, 1988, with the United States District Court for the Central District of Illinois. The Complaint filed by the United States alleged violation of section 113 of the Clean Air Act for failure by defendant to comply with applicable provisions of the Illinois State Implementation Plan ("SIP"), relating to sulfur dioxide emissions, at defendant's Coffeen Generating Station.

The proposed Decree requires defendant to comply with the Clean Air Act by not exceeding the sulfur dioxide emission limitations of the SIP. In addition, defendant must install and operate a system to continuously monitor the sulfur dioxide emission levels of the plant, and also pay a civil penalty of $75,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Central Illinois Public Service Co.*, D.J. Reference No. 90–5–1–1044.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of Illinois, U.S. Courthouse, 600 E. Monroe Street, Springfield, Illinois 62705, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above address or by mail from the Environmental Enforcement Section, Land and Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6386 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act, Indiana Department of Mental Health et al.

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Indiana Department of Mental Health, et al.*, Civil Action No. IP87–213–C, was lodged with the United States District Court for the Southern District of Indiana, on March 15, 1988. The complaint filed by the United States alleged that the defendants violated section 113 of the Clean Air Act, 42 U.S.C. 7413, by failing to comply with applicable provisions of the Indiana State Implementation Plan ("SIP") pertaining to the control of opacity and particulate emissions.

The proposed Decree establishes deadlines for achieving compliance with Indiana Administrative Code Regulations APC–3 and 325 IAC 6–1–12 (parts of the Indiana SIP relating to opacity and particulate emissions) by replacing defendants' offending coal-fired boilers with clean-burning oil and gas-fired boilers.

In addition, the proposed Consent Decree requires defendants to pay a civil penalty of $28,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Indiana Department of Mental Health*, et al., D.J. Reference No. 90–5–2–1–1039.

The proposed Consent Decree may be examined at the office of the United States Attorney, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204 and at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 230 South Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Lands and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $1.40 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–6387 Filed 3–23–88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Harry J. Smith, Jr., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Harry J. Smith, Jr., et al.*, Civil No. 86–0068–B, was lodged with the United States District Court for the District of Maine on March 18, 1988.

The proposed consent decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR 61.20, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.*, for the defendants' alleged failure to respond to requests for information requested by the United States Environmental Protection Agency.

The proposed decree requires the defendants to comply with the Clean Air Act and the asbestos NESHAP requirements. The proposed decree also requires payment of a $2,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Harry J. Smith, Jr. et al.*, D.J. Ref. No. 90–5–2–1–893.

The consent decree may be examined at the office of the United States Attorney, District of Maine, Rm. 321, 202 Harlow Street, Bangor, Maine 04401; at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Mass. 02003; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 88–6384 Filed 3–23–88; 8:45 am]

BILLING CODE 4410–01–M

Declaration of Intention Filing Requirement

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Justice.

ACTION: Notice.

SUMMARY: Notice is hereby given that the declaration of intention filing requirement contained in section 102 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1324b(a)(3)(B)) is satisfied as long as the declaration is completed and filed with the Immigration and Naturalization Service before a charge of citizenship status discrimination is filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices.

DATES: This notice is effective immediately and will be given retroactive effect.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490; (800) 255–7688 (toll free) or (202) 653–8121 (Voice) or (202) 653–5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel, (800) 255–7688 (toll free) or (202) 653–8246 (Voice) or (202) 653–5710 (TDD).

SUPPLEMENTARY INFORMATION: The filing of the Immigration and Naturalization Service (INS) Form I–772 Declaration of Intending Citizen has caused some concern among those who deal with the Office of Special Counsel for Immigration Related Unfair Employment Practices. Questions have been raised about the timing of the filing of the I–772 and its availability. This notice is to address those concerns and to dispel any confusion that may have arisen.

Under section 102 of the Immigration Reform and Control Act of 1986 (IRCA), protection from citizenship status discrimination is afforded to citizens, nationals, and intending citizens. Among other definitional requirements, an intending citizen is an alien who "evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen." (8 U.S.C. 1324b(a)(3)(B)). When IRCA was passed, the only form in existence suited to that requirement was INS Form N–315. That Form, however, had fallen into disuse and could be executed only by permanent residents. IRCA permits temporary residents under the new legalization program, refugees, and asylees, as well as permanent residents, to qualify for intending citizen status. A new form was needed. The Immigration and Naturalization Service created the I–772 to meet that need.

Confusion has arisen over the timing of the filing of the I–772. Neither the statute nor the regulations specifically address the question of when the Declaration of Intention must be filed. The preamble to the regulations published on October 6, 1987 (52 FR 37402) states that the declaration must be completed prior to the occurrence of the alleged discrimination, *Id.* at 37407. The instructions to the I–772 itself, however, state that filing the I–772 is a prerequisite only "to assert a claim," not to qualify for protection.

To dispel any confusion on this question, this notice announces that the Justice Department views the declaration of intention filing requirement as satisfied as long as the declaration is completed and filed before the charge of discrimination is filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices. It is not necessary to complete and file the declaration before the occurrence of the alleged discrimination.

This notice will also serve as a reminder that the original I–772 must be filed with the Immigration and Naturalization Service. A copy of the fully completed I–772, showing that the form has been received and filed by an INS officer, should accompany any citizenship status discrimination charges filed with this Office by or on behalf of intending citizens. For permanent residents, filing a Form N–315 with any court exercising naturalization jurisdiction remains an alternative. The same timing requirements for filing apply.

Lawrence J. Siskind,

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

[FR Doc. 88–6375 Filed 3–23–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Richard A. Conley, M.D.; Revocation of Registration

On January 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard A. Conley, M.D. (Respondent) of Dalton Family Practice, P.C., 1114 Professional Boulevard, Dalton, Georgia 30720, proposing to revoke his DEA Certificate of Registration, AC2133142 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). In addition, the Order to Show Cause alleged that Respondent materially falsified his applications for renewal of his Certificate of Registration thereby providing a second statutory basis for the revocation of his registration pursuant to 21 U.S.C. 824(a)(1).

In a letter dated January 31, 1988, Respondent failed to request a hearing and instead submitted a written statement regarding his position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administrator hereby enters his final order in this matter based upon the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that effective June 30, 1983, the Oklahoma State Board of Medical Examiners suspended Respondent's license to practice medicine in the State of Oklahoma for one year. As a result of this suspension, Respondent voluntarily surrendered his DEA Certificate of Registration

AC2133142, on June 29, 1983. Even though Respondent surrendered this registration, he continued to submit applications for its renewal. On these renewal applications, Respondent answered no to a question asking whether the applicant has ever surrendered a Controlled Substances Act registration. Therefore, Respondent materially falsified his applications for renewal of his DEA Certificate of Registration and consequently lawful grounds exist for the revocation of his registration. 21 U.S.C. 824(a)(1).

Respondent subsequently moved from Oklahoma to Georgia. Pursuant to a Consent Order dated December 3, 1986, the Composite State Board of Medical Examiners for the State of Georgia issued Respondent a license to practice medicine in the State of Georgia subject to various conditions. One condition of Respondent's licensure is that for a period of five years from the effective date of the Consent Order, December 3, 1986, Respondent shall not prescribe, administer or dispense any controlled substance in the course of his office practice. During the course of another investigation, DEA investigators discovered that on at least 81 occasions, Respondent continued either to write prescriptions for, or authorize the dispensing of, controlled substances even after the Composite State Board of Medical Examiners for the State of Georgia specifically ordered him not to do so. In his written statement dated January 31, 1988, Respondent stated, "[i]f I have written any prescriptions for controlled substances, it was an honest mistake and was not done in a knowingly, repeated, habitual manner." The Administrator finds however, that Respondent repeatedly violated the Consent Order under which he is licensed to practice medicine in the State of Georgia. A prescription survey conducted at 13 of the 18 pharmacies in Dalton, Georgia revealed a total of 81 prescriptions either written or authorized by Respondent between December 7, 1986 and April 1, 1987. This does not indicate an oversight by Respondent but rather it demonstrates an habitual pattern of disregard for the responsibilities which accompany the handling of controlled substances. Accordingly, the Administrator concludes that Respondent's continued registration is inconsistent with the public interest.

Additionally in his January 31, 1988 written statement, Respondent stated that it was not his intent to falsify his application for registration. Respondent, in referring to the surrender of his registration, further stated that, "[i]t was my understanding that this was not a punitive action and that once my Medical License was reinstated my DEA license would be restored." The Administrator does not find Respondent's argument persuasive. Whether or not DEA ever reinstated Respondent's registration, the fact remains that on June 29, 1983, Respondent did surrender his DEA registration. The question on the application specifically asks whether an applicant has ever surrendered a Controlled Substances Act registration. Respondent answered no to this question on more than one renewal application when in fact he had surrendered such a registration. The Administrator further doubts the accuracy of Respondent's position as stated in his written statement based on Respondent's additional material falsification of his renewal application dated December 22, 1986. A question on the application asks the applicant, "[a]re you currently authorized to prescribe, distribute, dispense, conduct research or otherwise handle controlled substances in the schedules for which you are applying, under the laws of the State or jurisdiction in which you are operating or proposing to operate." In response to this question, Respondent answered yes. However, this is not the case. Pursuant to the Consent Order of the Composite State Board of Medical Examiners for the State of Georgia, as of December 3, 1986, Respondent was not authorized to prescribe, dispense or administer controlled substances in the course of his office practice, yet he was permitted to write orders for medication for institutionalized patients. This restriction is in effect for five years from the date of the Order. Therefore, Respondent was less than truthful when executing his application. Respondent was clearly not authorized to handle controlled substances in an unrestricted manner in the State of Georgia at the time he signed his application for registration.

The Administrator concludes that Respondent's DEA registration must be revoked. Respondent materially falsified his renewal applications and has committed various acts which render his continued registration inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AC2133142, previously issued to Richard A. Conley, M.D., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective April 25, 1988.

John C. Lawn,

Administrator.

Date: March 17, 1988.

[FR Doc. 88-6376 Filed 3-23-88; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1110-88]

Certification of State Governments as Qualified Designated Entities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Immigration and Naturalization Service is exercising its option, relating to the INS cooperative agreement with qualified designated entities (QDEs) participating in the Service's legalization program, to request additional QDE applications from State governments and other certain similar entities. This action is being taken by the INS in an effort to reach more potential aliens seeking temporary residence under the Immigration Reform and Control Act of 1986 (IRCA), before the May 4, 1988 deadline.

DATE: March 24, 1988.

FOR FURTHER INFORMATION CONTACT: E.B. Duarte, Director, Office of Outreach at 425 "I" Street NW., Room 6230, Washington, DC 20536; telephone number (202) 633-4123.

SUPPLEMENTARY INFORMATION: Section 245A(c)(2) of the Immigration and Nationality Act (Act), as amended by the Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603, provides for the designation by the Attorney General of qualified entities to assist aliens in the preparation and submittal of applications for legalization status. In an effort to provide all potentially eligible aliens every opportunity to apply for legalization by May 4, 1988, the INS is exercising its option to request additional QDE applications from state governments and other certain similar entities. The option procedures are detailed in the cooperative agreement application instructions, revised and distributed March 25, 1987. The Service will limit the application process to State governments because it is felt that these agencies and their subdivisions possess extensive networks and resources that can readily assist eligible aliens. Due to the approaching deadline, the Service

has determined to expedite the process by preliminary certifying as QDEs all 50 State governments of the United States and the governments of Puerto Rico, Guam, the United States Virgin Islands and the District of Columbia. To enable these entities to immediately process legalization applications, they are being issued QDE identification numbers which can be affixed to legalization applications filed with INS legalization offices.

The INS will send information packets concerning the cooperative agreement and regulations and procedures pertaining to the QDEs to the State governments and other certain similar entities. The information will explain how the entities can formalize the cooperative agreement relationship with the Service.

The following QDE I.D. numbers are issued:

Eastern Region

Connecticut.....00-600-00
Delaware.....00-601-00
District of Columbia.....00-606-00
Maine.....00-607-00
Maryland.....00-608-00
Massachusetts.....00-609-00
New Hampshire.....00-610-00
New Jersey.....00-602-00
New York.....00-611-00
Pennsylvania.....00-612-00
Puerto Rico.....00-613-00
Rhode Island.....00-614-00
Vermont.....00-615-00
Virginia.....00-616-00
Virgin Islands (U.S.).....00-617-00
West Virginia.....00-618-00

Southern Region

Alabama.....00-619-00
Arkansas.....00-620-00
Florida.....00-621-00
Georgia.....00-622-00
Kentucky.....00-623-00
Louisiana.....00-626-00
Mississippi.....00-624-00
New Mexico.....00-625-00
North Carolina.....00-627-00
Oklahoma.....00-628-00
South Carolina.....00-629-00
Tennessee.....00-630-00
Texas.....00-655-00

Northern Region

Alaska.....00-631-00
Colorado.....00-632-00
Idaho.....00-633-00
Illinois.....00-634-00
Indiana.....00-635-00
Iowa.....00-636-00
Kansas.....00-637-00
Michigan.....00-638-00
Minnesota.....00-639-00
Missouri.....00-640-00
Montana.....00-641-00
Nebraska.....00-642-00
North Dakota.....00-643-00
Ohio.....00-644-00
Oregon.....00-645-00
South Dakota.....00-646-00
Utah.....00-647-00
Washington.....00-603-00
Wisconsin.....00-648-00
Wyoming.....00-649-00

Western Region

Arizona.....00-650-00
California.....00-651-00
Guam.....00-652-00
Hawaii.....00-653-00
Nevada.....00-654-00

Richard E. Norton,

Associate Commissioner, Examinations.

Date: March 17, 1988.

[FR Doc. 88-6377 Filed 3-23-88; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The panel will convene to consult and advise the NEH on reading and discussion programs in the nation's libraries. The meeting will be held on April 15-16, 1988 from 9:00 a.m. to 5:30 p.m. on April 15th and 9:00 a.m. to 1:00 p.m. on April 16th in Room M-07. This meeting will be open to the public.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-6438 Filed 3-23-88; 8:45 am]

BILLING CODE 7536-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Photography Fellowships) to the National Council on the Arts, will be held on April 11-14, 1988 from 9:00 a.m.-8:00 p.m. and on April 15, 1988 from 9:00 a.m.-5:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

March 18, 1988.

[FR Doc. 88-6396 Filed 3-23-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 7-9, 1988, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on February 24, 1988.

Thursday, April 7, 1988

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.-9:45 a.m.: Fitness for Duty (Open)—Review and discuss proposed NRC rule regarding fitness for duty of nuclear power plant operators.

9:45 a.m.-11:00 a.m.: Advanced Reactors (Open)—Discuss regulatory requirements for advanced DOE reactors.

11:15 a.m.-12:15 p.m.: Human Factors (Open)—Review proposed NRC research program regarding human factors.

1:15 p.m.-2:15 p.m.: Meeting with Director, NRR (Open)—Discuss items of mutual interest.

2:15 p.m.-5:15 p.m.: Rancho Seco Nuclear Power Plant (Open)—Briefing

and discussion regarding proposed restart of the Rancho Seco Nuclear Power Station.

5:30 p.m.–5:45 p.m.: Anticipated ACRS Activities (Open)—Discuss anticipated ACRS Subcommittee Activities and topics proposed for consideration by the full Committee.

5:45 p.m.–6:15 p.m.: ACRS Activities (Open)—Discuss proposed change in ACRS Bylaws regarding activities of ACRS members.

Friday, April 8, 1988

8:30 a.m.–9:45 a.m.: Operator Training and Qualification (Open)—Review proposed NRC policy statement regarding training and qualification of nuclear power plant operators.

10:00 a.m.–11:00 a.m.: Training of NRC Technical Personnel (Open)—Briefing regarding proposed changes in NRC program for training and qualification as required of NRC technical personnel.

11:00 a.m.–12:30 p.m.: Generic Issues (Open)—Discuss proposed ACRS comments regarding effectiveness of NRC Staff activities to deal with generic issues and unresolved safety issues.

1:30 p.m.–3:00 p.m.: IAEA Safety Principles (Open)—Briefing regarding proposed IAEA safety principles for nuclear power plants.

3:15 p.m.–4:00 p.m.: Generic Issues (Open)—Discuss proposed comments regarding effectiveness of NRC staff activities to deal with generic issues and unresolved safety issues.

4:00 p.m.–6:00 p.m.: Important Safety Related Issues (Open)—Discuss proposed hierarchical structure for important safety-related issues.

Saturday, April 9, 1988

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed ACRS reports regarding items considered during this meeting, proposed comments on a program to study the bottom head of the TMI–2 reactor pressure vessel, proposed comments on program to implement the safety goal policy, and ACRS comments regarding regulatory requirements for key features of DOE advanced reactor designs.

1:00 p.m.–1:45 p.m.: Appointment of New Members (Closed)—Discuss qualifications of candidates proposed for appointment to the Committee and internal agency allocation of resources to provide technical advice regarding nuclear power plant safety and the handling of nuclear radwaste.

This session will be closed to discuss information, the release of which would represent a clearly unwarranted invasion of personal privacy, and information that involves the internal personnel rules and practices of the agency.

1:45 p.m.–3:00 p.m.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information that involves the internal personnel rules and practices of the agency [5 U.S.C. 552b(c)(2)] and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Date: March 21, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–6496 Filed 3–23–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–160, License No. R–97, EA 88–32]

Georgia Institute of Technology, Atlanta, Georgia; Confirmatory Order Modifying License, Effective Immediately

I

The Georgia Institute of Technology (Georgia Tech) is the holder of Operating License No. R–97 issued by the Nuclear Regulatory Commission (NRC or Commission) on December 29, 1964, and subsequently amended. The license, as amended, authorizes Georgia Tech to operate its modified research reactor located on its campus in Atlanta, Georgia, at power levels up to 5 megawatts (thermal) for research and development activities in accordance with the conditions specified therein.

II

As a result of safety concerns identified during NRC inspections conducted on December 16, 1987, and January 4–5, 1988, and raised as a result of an August 1987 contamination event, an order modifying license, effective immediately was issued to Georgia Tech by the NRC on January 20, 1988. That order required that (a) the licensee cease utilization of the reactor facility for irradiation experiments until certain listed conditions were met and the NRC approves, in writing, the resumption of irradiation experiments, and (b) the results of the licensee's survey of the house of the individual involved in the August 1987 contamination event be provided in writing to the NRC within 10 days of the Order.

Subsequent to issuing the Order of January 20, 1988, the NRC initiated an investigation of alleged improper safety-related activities associated with the operation of the Georgia Tech Research Reactor (GTRR). That investigation is continuing.

On February 15, 1988, the President of the Georgia Institute of Technology directed the immediate suspension of all reactor operations at the Neely Nuclear Research Center which includes operation of the GTRR. He also announced that an independent evaluation of Georgia Tech's program and procedures would be performed by an outside expert.

During an Enforcement Conference on February 23, 1988, the NRC discussed a number of preliminary safety concerns that have come out of its investigation to date. These concerns, together with previously known events over the past year, give the NRC substantial concerns about the operation of the reactor. The

President stated that, as evidenced by his suspension of all reactor operations, he was also concerned. He then stated that Georgia Tech would not resume any reactor operations until the independent evaluation was completed, appropriate actions were taken on recommendations from that evaluation and from an internal investigation which he has initiated, the President was assured that all safety questions were adequately resolved, and the NRC concurred in the resumption of operations.

III

Due to NRC's concerns regarding the adequacy of management of the operation of the GTRR and the ongoing investigation of safety-related matters, I have determined that these commitments are required in the interest of the public health and safety and, therefore, should be confirmed by an immediately effective order.

Accordingly, pursuant to sections 104, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effectively immediately, that:

License No. R-97 is modified to prohibit resumption of operation of the GTRR until:

A. The licensee has identified, based on its reviews as well as the review of its independent evaluator, the root causes of the problems that may impact on the safe operations of the reactor and provided a listing of these issues to the Regional Administrator, Region II;

B. The President of the licensee has provided in writing to the Regional Administrator, Region II, a description of the actions taken to resolve the issues that may impact on the safe operation of the reactor and the reasons why he has determined that the suspension of reactor operations should be lifted; and

C. The Regional Administrator, Region II, has approved in writing the resumption of reactor operations.

The Regional Administrator, Region II, may in writing relax or rescind any of the above conditions upon written request and demonstration of good cause by the licensee.

The licensee or any other person adversely affected by this Order may request a hearing on this Order within twenty days of its issuance. Any request for hearing shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta St., NW., Suite 2900, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or any person who has an interest adversely affected by the Order, the Commission will issue an Order designating the time and place of any such hearing. If the Licensee fails to request a hearing within 20 days of the date of this Order, the provisions of this Order shall be final without further proceedings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 17th day of March 1988.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-6435 Filed 3-23-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

The Illinois Power Company et al.; (Clinton Power Station, Unit 1); Exemption

I

The Illinois Power Company [1] (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. (the licensees) are the holders of Facility Operating License No. NPF-62 which authorizes operation of the Clinton Power Station, Unit 1 (the facility) at steady-state reactor power levels not in excess of 2894 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensees' site in DeWitt County, Illinois.

II

10 CFR Part 50, Appendix J, Section III.D.3, states:

Type C tests. Type C tests should be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

These tests would become due at the Clinton Power Station, Unit 1, for certain containment isolation valves which are the subject of this Exemption, by October 21, 1988. The tests necessary to meet this section of Appendix J to 10 CFR Part 50 are required by Technical Specification 4.6.1.2 of the Clinton Power Station, Unit 1, Technical Specifications.

On January 13, 1988, the licensees submitted a request for exemption from Section III.D.3 of Appendix J to 10 CFR Part 50 for the Clinton Power Station, Unit 1, for eight containment isolation valves. The licensees proposed to perform Type C local leak rate tests (LLRTs) of these valves prior to startup from the first refueling outage for Unit No. 1 (scheduled to be initiated in January of 1989) in lieu of the 2-year interval required by Section III.D.3. The licensees also submitted by separate correspondence dated December 10, 1987, a related Technical Specification change request to the Clinton Power Station, Unit 1 license which would revise Technical Specification 4.6.1.2 to be consistent with the requested exemption. The licensees also responded to the Commission's staff request for additional information related to the exemption and amendment request by letter dated January 29, 1988.

In accordance with 10 CFR 50.12(a)(2), the licensees have stated that special circumstances are present which support the requested exemption. Particularly, with respect to 10 CFR 50.12(a)(2)(ii) and (v), the licensees state that the following special circumstances exist:

Section 50.12(a)(2)(ii)—The purpose of 10 CFR Part 50 Appendix J testing is to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the Technical Specifications or associated bases and (b) periodic surveillance of reactor containment penetrations and isolation valves is performed so that proper maintenance and repairs are made during the service life of the containment, and systems and components penetrating primary containment.

The containment leakage rate is primarily affected by equipment wear and maintenance. Isolation valves typically see little usage (especially test connections, vents and drain valves) except for periodic operability testing. This leads to little degradation of equipment or increase in the leakage rate. From October 21, 1988 to the first refueling outage, which must be initiated by no later than Febraury 28, 1989, these valves will be subject to minimal wear. These

[1] Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility

valves were last tested on October 21, 1986, shortly after the fuel was initially loaded into the core.

Redundancy regarding primary containment isolation is provided by two isolation valves in series or one isolation valve bounded by a closed loop outside containment. Consequently, a reduction in the effectiveness of one valve to provide a seal would not itself compromise containment integrity. Deterioration of the overall integrity of the containment penetrations is normally a gradual process. Considering the redundancy of the isolation barriers, the short duration of the requested extension of the testing interval and the limited number of valves affected, any reduction in the containment integrity during the extension period would be negligible.

These valves have not required maintenance since last tested on October 21, 1986. These valves are tested during cold shutdown, and to date, data from past testing shows leakage to be well within acceptable limits. Similar valves will be tested during the spring 1988 maintenance outage, and any excessive leakage or other degraded valve conditions indicative of a generic condition will be evaluated at that time.

Section 50.12(a)(2)(v)—IP is requesting a temporary exemption to the requirements of 10 CFR Part 50 Appendix J paragraph III.D.3 for a limited number (eight) of Containment Isolation Valves. All other Containment Isolation Valves at CPS are in compliance with these requirements. IP will be in complete compliance with 10 CFR Part 50 Appendix J paragraph III.D.3 after startup from the first refueling outage.

III

The Commission's staff has determined that the licensees' request for extension of the requested containment isolation valve Type C LLRTs until the first refueling outage is acceptable based on the following considerations:

1. The affordable results of previous leakage tests performed at the Clinton Power Station, Unit 1, on these valves, coupled with their small contribution to allowable leakage, confirmatory industry experience and expected gradual deterioration of valves of these types provide reasonable assurance and confidence that granting the requested schedular exemption will not result in a significant decrease in the integrity of the containment boundary.

2. Similar valves will be tested during the spring 1988 maintenance outage and any excessive leakage or other degraded valve conditions indicative of a generic condition will be evaluated by IP at that time.

3. Leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposures to plant personnel. Moreover, some valves, because of their intended functions, cannot be tested during power operations. For valves that cannot be tested during power operations or those that, if tested during power operation would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system), the increase in confidence of containment integrity and reactor coolant pressure boundary integrity following a successful test is not significant enough to justify either extending the 1988 maintenance outage by about one week or having a plant shutdown specifically to perform the LLRTs within the 2-year period, as long as the valves are in compliance with items 1 and 2 above. The drywell head has not been removed since it was initially bolted down in October 21, 1986; thus there has not been a ready opportunity to perform these tests to date.

For details with respect to the staff's evaluation see the Safety Evaluation Supporting Amendment to Facility Operating License No. NPF-62 dated March 18, 1988.

The Commission's staff has reviewed the licensee's description of the special circumstances relative to this exception request and has determined that there are special circumstances in this instance which satisfy 10 CFR 50.12(a)(2)(ii) in that application of the regulation for the circumstances requested is not necessary to achieve the underlying purpose of the rule. The 2-year interval testing requirement for Type B and C penetrations is intended to be often enough to prevent significant deterioration from occurring and long enough to permit LLRTs to be performed during plant outages. In this case the penetrations at issue were last tested in October 1986 shortly after initial fuel loading. A full power license was issued in April 1987 and the reactor reached 100% power during September 1987. As a result of delays in attaining full power, an occurrence common to initial startup activities, the first refueling outage for the Clinton facility is scheduled to be initiated by no later than February 28, 1989, approximately four months longer than two years since the last type B and C tests on these penetrations. However, the plant will not have accumulated two full years of power operations by the end of the first refueling outage, and the integrated temperature/pressure profiles experienced by the valves considered in this one-time limited extension of the test interval will not be significantly greater than that expected for subsequent refueling cycle test intervals. Moreover, initial tests on these valves showed very little leakage and since the facility has just commenced operation, little deterioration of the valves is expected during these early years of operating life. Accordingly, in these circumstances the staff concludes that conducting the type B and C tests of these valves before the end of the two year interval is not necessary to provide assurance of adequate leakage integrity of the affected penetrations. Moreover, delaying the tests until shutdown, a matter of up to four months, will help to limit occupational radiation exposure.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special circumstances are present in that the requested exemption is temporary in nature, the application of the regulation during this limited period is not necessary to achieve the underlying purpose of the rule, and the licensees have made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants the following Exemption from the requirements of Section III.D.3 of Appendix J to 10 CFR Part 50:

The 2-year limit on the Type C testing interval for the eight valves identified in the licensees' January 13, 1988, request for exemption is extended on a one-time basis until prior to startup from the first refueling outage for the Clinton Power Station, Unit 1, provided the licensees conduct these tests prior to when containment integrity must be assured following the refueling operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (53 FR 8825 dated March 17, 1988).

A copy of the Commission's Safety Evaluation referred to in this Exemption is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

A copy may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 18th day of March 1988.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-6434 Filed 3-23-88; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Certain Industry Advisory Committees; Determination of Closing of Meetings

The Industry Advisory Committees for Trade Policy Matters (including the Industry Policy Advisory Committee, the Committee of Chairman of Industry Advisory Committees, the Industry Sector Advisory Committees, and the Industry Functional Advisory Committees) (the Advisory Committees) have been established to advise the United States Trade Representative and the Secretary of Commerce, in accordance with subsection 135(a) of the Trade Act of 1974, as amended (the Act), on trade matters referred to in section 102 of the Act; with respect to the operation of any trade agreement once entered into; and with respect to other matters arising in connection with the administration of the trade policy of the United States.

I, therefore, determine that meetings of the Advisory Committees will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions and with matters listed in section 552b(c) of Title 5 of the United States Code. Therefore, meetings of the Advisory Committees will be closed to the public unless otherwise determined by the United States Trade Representative or his designee.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-6400 Filed 3-23-88; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25487; File No. SR-Amex-88-1]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On January 13, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend until June 30, 1988 the pilot plan for equity (stock) options during emergency or unusual market conditions.

The proposed rule change was noticed in Securities and Exchange Act Release No. 25380 (February 22, 1988), 53 FR 6044 (February 29, 1988). No comments were received on the proposed rule change.

In November, 1985, the Amex implemented a pilot program to be used during short periods of extremely high order flow for the execution of options orders automatically routed to the Exchange through the Amex's routing system, AUTOAMOS.[3] Under the pilot program, the implementation of emergency procedures could be authorized by the concurrence of two Floor Governors when, in their opinion, the Exchange received an extremely large influx of both system and non-system orders, such that the affected specialist(s) could not expose each AUTOAMOS order to the crowd. Under these circumstances, the specialist in the affected option was permitted to execute incoming AUTOAMOS orders either as agent against the book or as principal, without exposing them to the crowd.

In January, 1987, the pilot plan for equity options was extended and enhanced by the utilization of AUTO-EX.[4] AUTO-EX is an automatic system that permits member firms to route public customer market and marketable limit orders of up to 20 contracts[5] through AUTOAMOS for automatic execution at the best bid or offer displayed at the time the order is entered into the system. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order. If the best bid or offer is not on the specialist's book, the contra side of the AUTO-EX trade is assigned to one of the Amex Registered Options Traders ("ROTs") who have signed on the system or to the specialist who participates in the rotation.

AUTO-EX is implemented when two floor officials have determined that an emergency situation involving high order flow is occurring. AUTO-EX has been activated on twenty-eight occasions in response to various different "emergency" or "breakout" situations since January 1987. The AUTO-EX pilot plan for equity options has been highly successful in enhancing execution and operational efficiencies during these emergency situations. The Amex believes that it is important to continue to have available the most efficient means of dealing with emergency, high volume situations. Accordingly, the Exchange proposed to extend the AUTO-EX pilot program pending Commission approval of Amex's proposal seeking permanent approval of AUTO-EX's use in all equity options,[6] so that it can continue to be activated in equity options when emergency situations occur.

The Commission believes that the proposed rule change will benefit public customers, member firms, and Amex floor brokers by ensuring that orders routed to the Exchange through AUTOAMOS will be handled efficiently during periods of peak volume. By utilizing the AUTO-EX system during these periods, AMEX ROTs who elect to participate in the pilot will be able to participate more fully in trading during fast markets. In addition, the proposed procedures should allow Amex specialists more time to handle non-system orders during these periods.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [7] and the rules and regulations thereunder. The Commission believes that extending the AUTO-EX pilot plan will enhance the execution of orders during emergency situations and will facilitate transactions in securities and protect the investing public.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: March 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6448 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1987).

[3] This pilot was approved by the Commission in Securities Exchange Act Release No. 22447 (September 24, 1985), 50 FR 40093.

[4] *See Securities Exchange Act Release No. 24228 (March 18, 1987), 52 FR 9601.*

[5] The Amex's proposal to increase the size of eligible orders in the AUTO-EX system from 10 to 20 contracts was approved in Securities Exchange Act Release No. 24899 (September 10, 1987), 52 FR 35012.

[6] *See* Securities Exchange Act Release No. 25056 (October 23, 1987).

[7] 15 U.S.C. 78f (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 C.F.R. 200.30-3(a) (1987).

[Release No. 34-25485; File No. SR-PHLX 88-09]

Self-Regulatory Organizations; Partial Accelerated Approval of Rule Change By the Philadelphia Stock Exchange, Inc.; Value Line Arithmetic Average Computation

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") on February 26, 1988, a proposed rule change to revise the method of computation of the Value Line Composite Stock Average Index ("XVL Index") underlying index option contracts to an arithmetic average from a geometric average.

The proposed rule change was published for comment in Securities Exchange Act release No. 25442 (March 10, 1988).

The Phlx has traded the XVL index utilizing a geometric average computation since January 11, 1985.[3] Currently, the XVL Index contracts traded at the PHLX are American style option contracts, although the Commission also has approved the trading of European style options on the Value Line Index.[4]

The proposed rule change would revise the method of computation of the XVL Index to an arithmetic average from a geometric average. The XVL Index is the only index that currently is calculated on a geometric average. Geometric averaging tends to underperform an arithmetic average and the geometric averaging of the XVL Index has resulted at times in substantial disparities between prices of the XVL futures and options contracts and the level of the underlying cash index.

The Exchange notes that geometric averaging of the XVL Index has created investor confusion and impedes efforts by market participants to develop precise hedges between the index contracts and their portfolios of underlying common stocks.

The PHLX has requested that, pending final approval of the rule change, the Exchange be allowed to add series of arithmetically averaged XVL Index Index contracts to complement such series of XVL Index contracts that are currently listed for trading calculated on a geometric average.[5] Accordingly, pending final approval of the rule change, there may be some arithmetic and geometric series open simultaneously.[6]

The Commission finds good cause for approving the proposed rule change as it relates solely to the addition of these new arithmetically averaged contracts prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** for several reasons. First, the Commodities Futures Trading Commission recently has approved a Kansas City Board of Trade ("KCBT") proposal to revise the method of computation of the XVL future to an arithmetic average from a geometric average. The Commission believes that adopting a corresponding change for near term index options contracts trading on the Phlx will facilitate market participants' ability to hedge their respective options and futures positions with index products that are based on a uniformly calulated index. By permitting the PHLX to introduce option series that will be calculated in a similar manner and correspond to the index futures trading on the KCBT, market participant's hedging strategies will not be disrupted. At the same time, the Commission believes that investor confusion will be minimal since the PHLX will disseminate information concerning the different index calculations. Consequently, the Commission finds that the portion of the rule change receiving accelerated approval is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commision, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 14, 1980.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change referenced above be, and hereby is, approved, as it related to the addition of near term arithmetically average Value Line Index contracts.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: March 18, 1988.

[FR Doc. 88–6447 Filed 3–23–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25486; File Nos. SR-PHLX-88-01, SR-PSE-87-21]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Changes

On January 27, 1988, the Philadelphia Stock Exchange, Inc. ("PHLX") and the Pacific Stock Exchange, Inc. ("PSE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule changes to extend the market index option escrow receipt pilot program until June 30, 1988.

In August 1985, the Commission approvaed a one-year pilot program to permit the use of cash, cash equivalents, one or more qualified securities, or a combination of the foregoing, as collateral for escrow receipts issued to cover short call positions in broad-based stock index options.[3] The pilot was to

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[1] 15 U.S.C. 76s(b) (1) (1982).

[2] 17 CFR 240.19–4 (1987).

[3] Trading the XVL index utilizing a geometric average computation was approved in Securities Exchange Release No. 34–21392 (October 10, 1984) 49 FR 40987.

[4] *See* Securities Exchange Release No. 34–24508 (May 22, 1987) 52 FR 20658. An American style option may be exercised by its holder anytime before expiration. A European style option, however, can be exercised only on the last trading day prior to its expiration.

[5] Telephone conversation between Richard R. Chase, Executive Vice President, PHLX, and Howard Kramer, Assistant Director, Division of Market Regulation, March 14, 1988.

[6] The Exchange will disseminate information to minimize any confusion between the products during this overlay period.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] CFR 200.30–3(a)(12) (1986).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

[3] *See* Securities Exchange Act Release No. 22323 (August 13, 1985), 50 FR 33439 for a description of the pilot.

end on August 19, 1986 but was initially extended until February 20, 1987 to provide sufficient time for the CBOE to review the data complied during the original pilot period.[4]

On February 6, 1987 the CBOE submitted a report to the Commission and requested that the pilot be extended until June 30, 1987 in order to give the Commission sufficient time to review and evaluate the report. The pilot was subsequently extended until December 31, 1987 to allow additional time for Commission review of the CBOE report.[5]

The Commission has determined to extend the pilot until June 30, 1988 in order that the options exchanges and the Options Clearing Corporation may review the format of the receipt. The proposed rule changes will extend the operation of the pilot program and thereby provide a workable mechanism through which index call options can be written in a cash account.

The Commission finds that the proposed rule changes to extend the operation of the index option escrow receipt program through June 30, 1988, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The pilot program extension is consistent with the Act because it will enable continuation of a program designed to reduce operational difficulties of banks and trust companies while the Commission evaluates the program's effectiveness. In addition, the Commission will have the opportunity to assess the program's operation during the October 1987 market break before determining whether to make the program permanent.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication in the **Federal Register** because the pilot was previously approved by the Commission, no adverse comments have been received regarding its operation, and the extension will allow for uninterrupted continuation of the program. Furthermore, the Commission recently approved identical proposals to extend the pilot submitted by the Chicago Board Options Exchange, Inc. and the American Stock Exchange, Inc.[6]

[4] *See* Securities Exchange Act Release No. 23552 (August 25, 1986), 51 FR 31183.

[5] *See* Securities Exchange Act Release No. 24708 (July 15, 1987), 52 FR 27604

[6] *See* Securities Exchange ACt Release No. 25242 (January 5, 1988) 53 FR 648.

Interested persons are invitied to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communicaitons relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of each exchange's filing also will be available for inspection and copying at the principal office of the respective exchange. All submissions should refer to the file numbers in the caption above and should be submitted by April 14, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7] that the proposal to extend the operation of the pilot through June 30, 1988, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: March 18, 1988.

[FR Doc. 88-6449 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

First Fidelity Bancorporation
Series C, $4.00 Convertible Voting Preferred Stock, $1.00 Par Value (File No. 7-3151)

Morgan Products, Ltd.
Common Stock, $.10 Par Value (File No. 7-3152)

Systems Integrators, Inc.
Common Stock, No Par Value (File No. 7-3153)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 7, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6473 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1986).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Guardsman Products, Inc.
Common Stock, $1.00 Par Value (File No. 7-3154)

Dean Witter Government Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-3155)

First Fidelity Corporation
Common Stock, $1.00 Par Value (File No. 7-3156)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 7, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6474 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Stride Rite Corporation
Common Stock, $1.00 Par Value (File No. 7-3157)
Carteret Bancorp, Inc. (Holding Company)
Common Stock, $0.01 Par Value (File No. 7-3158)
Solitron Devices, Inc.
Common Stock, $0.01 Par Value (File No. 7-3159)
TPA of America, Inc.
Common Stock, $0.01 Par Value (File No. 7-3160)
Wean Incorporated
Common Stock, $0.01 Par Value (File No. 7-3161)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 7, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-6475 Filed 3-23-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1988, included in the Omnibus Appropriations Act, Pub. L. 100-202 signed into law by President Reagan on December 22, 1987, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

Transit property	Grant number	Grant amount	Obligation date
Section 3 grants:			
Metropolitan Transit Authority, Houston, TX	TX-03-0119	$15,604,265	Feb. 12, 1988.
City of Dallas, Dallas, TX	TX-03-0121	1,201,449	Feb. 24, 1988.
Metropolitan Transit Commission, Minneapolis, MN	MN-03-0037	8,397,000	Mar. 2, 1988.
Section 9 grants:			
Utica Transit Authority, Utica, NY	NY-90-X105-01	140,000	Feb. 16, 1988.
New Jersey Transit Corporation, Northeastern, NJ	NJ-90-X024	9,300,000	Mar. 4, 1988.

Issued on March 18, 1988.

Alfred A. DelliBovi,

Administrator.

[FR Doc. 88-6495 Filed 3-23-88; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 29, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,188
Stockmen's Bank and Trust Company, Gillette, Wyoming

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Discussion re: Application of the Corporation's Guidelines for Real Estate Appraisal Policies and Review Procedures.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-6590 Filed 3-22-88; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 29, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for Federal deposit insurance:

Seoul Bank of California, a proposed new bank to be located at 3000 West Olympic Boulevard, Los Angeles, California.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 22, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-6591 Filed 3-22-88; 8:45 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 53, No. 57
Thursday, March 24, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Alaska, et al.

Correction

In notice document 88-5631 appearing on page 8483 in the issue of Tuesday, March 15, 1988, make the following corrections:

1. In the second column, under the entry for "Docket Number 88-075", in the ninth complete paragraph, in the first line, "Commission" should read "Commissioner".

2. In the same column, under "Docket Number 88-084", in the fifth line from the bottom, "Commission" should read "Commissioner".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

Correction

In notice document 88-5724 beginning on page 8683 in the issue of Wednesday, March 16, 1988, make the following correction:

On page 8683, in the third column, in the first complete paragraph, in the eighth line, "Category 343" should read "Category 342".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DAR Case 87-305]

Department of Defense Federal Acquisition Regulation Supplement; Special Tooling and Special Test Equipment

Correction

In proposed rule document 88-4320 beginning on page 6015 in the issue of Monday, February 29, 1988, make the following correction:

On page 6015, in the first column, under **SUPPLEMENTARY INFORMATION**, in the sixth line from the bottom "2339" should read "2329".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

Correction

In rule document 88-4371 beginning on page 6151 in the issue of Tuesday, March 1, 1988, make the following corrections:

1. On page 6152, in the third column, in the fourth paragraph, in the second line, "institutions" should read "institution".

2. On page 6153, in the third column, in amendatory instruction 5, in the second line, remove the semicolon before "and".

§ 1602.13 [Corrected]

3. On page 6154, in the second column, in § 1602.13(e)(7), in the first line, insert a colon after "mail".

4. On the same page, in the third column, in § 1602.13(h)(1), in the seventh line, after "not" insert "be".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 25117; Amdt. No. 150-1]

Expansion of Applicability of Part 150 to Heliports

Correction

In rule document 88-5677 beginning on page 8722 in the issue of Wednesday, March 16, 1988, make the following corrections:

1. On page 8723, in the first column, in the first complete paragraph, in the 25th line, "date" should read "data".

2. On page 8724, in the first column, in amendatory instruction 3, in the last line, "helicopters" should read "heliports".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8184]

Income Taxes; Special Rules Relating to Nuclear Decommissioning Costs

Correction

In rule document 88-4445 beginning on page 6800 in the issue of Thursday, March 3, 1988, make the following correction:

§ 1.468A-8 [Corrected]

On page 6819, in the third column, in § 1.468A-8(b)(6), in the seventh line, after "begins" insert "before".

BILLING CODE 1505-01-D

Federal Register

Thursday
March 24, 1988

Part II

Department of the Treasury

31 CFR Part 25

Prepayment of Foreign Military Sales Loans Made by the Department of Defense and the Federal Financing Bank and Guaranteed by the Department of Defense; Interim Rule With Request for Comments

DEPARTMENT OF THE TREASURY

31 CFR Part 25

Interim Rule Governing Prepayment of Foreign Military Sales Loans Made by the Department of Defense and the Federal Financing Bank and Guaranteed by the Department of Defense

AGENCY: Department of the Treasury.

ACTION: Interim rule; request for comments.

SUMMARY: The regulations which follow implement the provisions relating to the prepayment of loans by foreign governments contained in paragraph (a), Refinancing, under the heading, Foreign Military Sales Debt Reform, of Title III, Military Assistance, of the Act entitled "Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988" (Public Law No. 100–202), enacted December 22, 1987 (the "Act"). The Act specified that the President may, during fiscal years 1988 through 1991, transfer existing United States guarantees of outstanding Foreign Military Sales ("FMS") loans, or issue new guarantees, either of which may be attached to new loans made by United States financial institutions to finance the prepayment at par of the principal amounts maturing after September 30, 1989 of existing FMS loans. The proceeds of the new loans so obtained shall be used to prepay existing FMS loans with interest rates of ten percent or higher, interest accrued on the FMS loans prepaid, and arrearages on FMS loans. The guarantees that are authorized to be attached to such new loans shall cover no more and no less than 90 percent of the principal of the new loans, plus 90 percent of the interest thereon. Nothing in this regulation is intended to authorize any private United States financial institution to engage in any activity not otherwise authorized or permitted for such institution under any applicable laws of the United States, any territory or possession of the United States, any State or the District of Columbia.

DATE: This Interim Rule is effective on March 24, 1988. However, before issuing the Final Rule, the Department will consider comments submitted by the public. Comments must be received in writing on or before April 25, 1988. This Interim Rule is effective upon publication, thereby enabling Borrowers to proceed with the application procedure.

ADDRESS: Send comments to the Office of the Assistant Secretary for Domestic Finance, Room 3054, Main Treasury Building, Washington, DC 20220. Attention: Gene Holland.

FOR FURTHER INFORMATION CONTACT: Gene Holland, Office of the Assistant Secretary for Domestic Finance, Department of the Treasury. (202) 566–2468.

Interim Rule With Request for Public Comment

The Act requires that implementing regulations be issued within 90 days after the date of enactment, which was December 22, 1987. In order to meet the statutory deadline for issuing implementing regulations and at the same time provide the public an opportunity to comment on the regulations, the Treasury is issuing an Interim Rule with request for public comment. The Treasury finds that good cause exists to make the Interim Rule effective upon publication, thereby enabling those borrowers that wish to proceed with application to seek a guarantee for the refinancing loans to do so.

Procedural Requirements

Because the Interim Rule involves foreign and military affairs functions of the United States, it is not subject to Executive Order 12291 or the public notice and delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553). Moreover, since the Act requires that these regulations be published and effective within ninety days of December 22, 1987, the Department finds that good cause exists to dispense with the public notice and delayed effective date requirements of 5 U.S.C. 553.

As no notice of proposed rulemaking is required, this Interim Rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The requirements to collect information contained in this Interim Rule have been reviewed and approved by the Office of Management and Budget pursuant to section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Comments on these requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Departmental Offices, Washington, DC 20503, and to the Department of the Treasury at the address previously specified.

List of Subjects in 31 CFR Part 25

Banks and banking, Loan programs—national defense, Reporting and recordkeeping requirements.

Subtitle A of Title 31, Code of Federal Regulations, is amended by adding Part 25 to read as follows:

PART 25—PREPAYMENT OF FOREIGN MILITARY SALES LOANS MADE BY THE DEPARTMENT OF DEFENSE AND FOREIGN MILITARY SALES LOANS MADE BY THE FEDERAL FINANCING BANK AND GUARANTEED BY THE DEPARTMENT OF DEFENSE

Subpart A—General

Sec.

Subpart B—Qualifications for Prepayment

Subpart C—Procedures

Subpart D—Form of Private Loan

Authority: Title III, Pub. L. 100–202; 31 U.S.C. 321.

Subpart A—General

§ 25.100 Definitions.

In this part, unless the context indicates otherwise:

(a) "Act" means paragraph (a), Refinancing, under the heading, Foreign Military Sales Debt Reform, of Title III, Military Assistance, of the Act entitled "Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988" (Public Law No. 100–202), enacted December 22, 1987.

(b) "AECA" means the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*).

(c) "Borrower" means the obligor on an FMS Advance.

(d) "Closing Date" means (1) with respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by DSAA, the date designated by the agreement of both the Borrower and DSAA on which the Guarantee will be attached to the Private Loan Note, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion

thereof which the Borrower has selected to prepay, will be prepaid; and (2) with respect to the prepayment of the amounts permitted by this part to be prepaid of FMS Loans held by the FFB and guaranteed by DSAA, the date designated by the unanimous agreement of the Borrower, the FFB, and DSAA on which the Guarantee will be attached to the Private Loan Note, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or portion thereof which the Borrower has selected to prepay, will be prepaid.

(e) "DSAA" means the Defense Security Assistance Agency, an agency within the Department of Defense.

(f) "Eligible FMS Advance" means any FMS Advance which (1) was outstanding on December 22, 1987; (2) has principal amounts becoming due and payable after September 30, 1989; and (3) bears interest at a rate equal to or greater than ten percentum per annum. "Eligible FMS Advance" may include FMS Advances meeting the criteria of Eligible FMS Advance which are made on account of FMS Loans even when such FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loan.

(g) "Eligible FMS Loan" means any FMS Loan which (1) was outstanding on December 22, 1987; (2) has principal amounts becoming due and payable after September 30, 1989; and (3) bears interest pursuant to the terms of the loan agreement relating thereto at a consolidated rate equal to or greater than ten percentum per annum. "Eligible FMS Loan" may include FMS Advances which are made on account of FMS Loans meeting the criteria of Eligible FMS Loan even when such FMS Advances do not, in themselves, meet the criteria of Eligible FMS Advance.

(h) "FFB" means the Federal Financing Bank, an instrumentality and wholly-owned corporation of the United States.

(i) "FMS" means Foreign Military Sales.

(j) "FMS Advance" means (1) a disbursement of funds made pursuant to a loan agreement between the Borrower and DSAA, which loan agreement provides for the making of an FMS Loan, or (2) a disbursement of funds made pursuant to a loan agreement between the Borrower and the FFB, which loan agreement provides for the making of an FMS Loan.

(k) "FMS Loan" means either (1) a loan made directly by the Secretary of Defense pursuant to Section 23 of AECA, or (2) a loan made by the FFB and guaranteed by the Secretary of Defense pursuant to Section 24 of AECA; and "FMS Loans" mean the aggregate of such loans made to or for the account of a Borrower.

(l) "Guarantee" means either a new guarantee of the United States issued by DSAA or an existing guarantee of the United States transferred by DSAA, in the form of guarantee set forth in § 25.406 of this part, which guarantee will be attached to a Private Loan Note.

(m) "Non-Registered Obligation" means a bearer obligation which does not comply with all of the registration requirements of the Internal Revenue Code.

(n) "Permitted P&I Prepayment Amount" means, with respect to each Eligible FMS Loan or Eligible FMS Advance, as the case may be, the sum of (1) all principal amounts which become due and payable after September 30, 1989, on the respective Eligible FMS Loan or Eligible FMS Advance; and (2) all unpaid interest, if any, on the respective Eligible FMS Loan or Eligible FMS Advance accrued as of the Closing Date.

(o) "Permitted Arrears Prepayment Amount" means the sum of all arrears, if any, on all FMS Loans, which arrears are outstanding on the Closing Date.

(p) "Private Lender" means either (1) any of the following entities: (i) Any banking, savings, or lending institution chartered or otherwise lawfully organized under the laws of any State, the District of Columbia, the United States or any territory or possession of the United States, including, but not limited to, any bank, trust company, industrial bank, savings association, savings and loan association, building and loan association, savings bank, credit union, or finance company, which is doing business in the United States; (ii) any broker or dealer registered with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934; (iii) any company lawfully organized as an insurance company, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or (iv) any United States pension fund; or (2) any trust or other special purpose financing entity which is wholly owned initially by an entity or entities of the type described in clause (1) of this definition.

(q) "Private Loan" means, collectively, the loan or loans that is or are obtained by the Borrower from a Private Lender to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay.

(r) "Private Loan Note" means, collectively, the note or notes executed and delivered by the Borrower to evidence the Private Loan.

(s) "Total Permitted Prepayment Amount" means the sum of (1) the aggregate of the respective Permitted P&I Prepayment Amount for all Eligible FMS Loans and all Eligible FMS Advances on account of FMS Loans which FMS Loans do not, in themselves, meet the criteria of Eligible FMS Loans; and (2) the Permitted Arrears Prepayment Amount.

§ 25.101 OMB control number.

The reporting requirements in this part have been approved under OMB Control Number 1505–0109.

Subpart B—Qualifications for Prepayment

§ 25.200 General rule.

(a) To qualify for a loan prepayment at par pursuant to the Act, a Borrower must have Eligible FMS Loans or Eligible FMS Advances.

(b) A Borrower may prepay the Total Permitted Payment Amount in portions using more than one closing; however, all prepayments of the Total Permitted Prepayment Amount must have a Closing Date that is not later than September 30, 1991.

(c) A Borrower may prepay all or a portion of the Total Permitted Prepayment Amount; however, if a Borrower selects to prepay any Permitted P&I Prepayment Amount of an FMS Advance, the Borrower must prepay the entire Permitted P&I Prepayment Amount of such FMS Advance.

Subpart C—Procedures

§ 25.300 Application procedure.

(a) Each Borrower that wishes to prepay at par the Total Permitted Prepayment Amount, or any portion thereof, must submit a written application which shall contain the following information and materials:

(1) An identification of each Eligible FMS Loan or Eligible FMS Advance, as the case may be, with respect to which the Borrower has selected to prepay the amount thereof permitted by this part to be prepaid, setting forth with respect to each such Eligible FMS Loan or Eligible FMS Advance: (i) The date on which the Eligible FMS Loan or Eligible FMS Advance was made, (ii) the original amount of the Eligible FMS Loan or Eligible FMS Advance, (iii) the principal and interest payment schedule of the Eligible FMS Loan or Eligible FMS Advance, and (iv) the maturity of the Eligible FMS Loan or Eligible FMS Advance;

(2) A description of the Permitted Arrears Prepayment Amount calculated by the Borrower as of the date of the application;

(3) A description of each Private Loan, 90 percent of which the Borrower seeks to have guaranteed, setting forth with respect to each Private Loan: (i) The total amount of the Private Loan, (ii) the proposed principal and interest payment schedule of the Private Loan, (iii) the proposed maturity of the Private Loan, and (iv) the identity of each Eligible FMS Loan or Eligible FMS Advance with respect to which amount thereof permitted by this part to be prepaid is to be prepaid with the proceeds of the Private Loan;

(4) All material transaction documents, in substantially final form, relating to the prepayment of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, with the proceeds of the Private Loan; and

(5) The name, address, and telephone number of a Borrower contact person with whom the FFB or DSAA will communicate to arrange for prepayment and closing.

(b) Each application shall be submitted to DSAA at the following address:

Defense Security Assistance Agency
Room 4B659
The Pentagon
Washington, DC 20301
Attention: Deputy Controller

§ 25.301 Approval procedure.

(a) *Review by the Defense Department.* (1) Each application will be reviewed by the Defense Department to ensure that the Private Loan complies with the requirements of this part, including without limitation the requirement that the payment schedule and maturity of each Private Loan are substantially the same as the payment schedules and maturities of the Eligible FMS Loans or Eligible FMS Advances, as the case may be, with respect to which the amounts thereof permitted by this part to be prepaid are to be prepaid with the proceeds of the Private Loan. Each application will also be reviewed by the Defense Department to ensure that the provisions of subsection (d) of the Act, Purposes and Reports, are considered.

(2) After each application has been reviewed, by the Defense Department, the Defense Department will either (i) return the application to the Borrower, or (ii) forward the application to the State Department.

(b) *Review by the State Department.* (1) Each application received by the State Department from the Defense Department will be reviewed by the State Department to ensure that the provisions of subsection (d) of the Act, Purposes and Reports, are considered.

(2) After each application has been reviewed by the State Department, the State Department will either (i) return the application to the Defense Department for return to the Borrower, or (ii) forward the application to the Treasury Department.

(c) *Processing by the Treasury Department.* (1) FMS Loans held by DSAA.

(i) Each prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, will be processed by the Treasury Department within 10 days after receipt by the Treasury Department of the application from the State Department.

(ii) After the application has been processed by the Treasury Department, the Treasury Department will return the application to the Defense Department and the Defense Department will commence the Closing Procedures described in § 25.302(a) of this part.

(2) FMS Loans held by the FFB.

(i) Each prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, will be processed by the Treasury Department within 30 days after receipt by the Treasury Department of the application from the State Department.

(ii) After the application has been processed by the Treasury Department, the Treasury Department will commence the Closing Procedures described in § 25.302(b) of this part.

§ 25.302 Closing procedure.

(a) *FMS Loans held by DSAA.* (1) After the Treasury has processed a prepayment application regarding an Eligible FMS Loan made by DSAA or an Eligible FMS Advance on account of an FMS Loan made by DSAA, as the case may be, DSAA will communicate with the Borrower's contact person identified in the prepayment application to establish a Closing Date. DSAA will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by DSAA of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guarantee will be attached to the Private Loan Note, the Private Loan shall be funded, and the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guarantee to the Private Loan Note will take place at such location as may be determined by the unanimous agreement of the Borrower, the Private Lender, and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to DSAA at the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury
New York, New York
021030004
TREAS NYC/ (5037)
For credit to the Defense Security Assistance Agency
Room 4B 659, The Pentagon
Washington, DC 20301–2800

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the DSAA. Checks, drafts, and other orders for payment will not be accepted.

(b) *FMS Loans held by the FFB.* (1) After the Treasury Department has processed a prepayment application regarding an Eligible FMS Loan made by the FFB and guaranteed by DSAA or an Eligible FMS Advance on account of an FMS Loan made by the FFB and guaranteed by DSAA, as the case may be, the FFB will communicate with the Borrower's contact person identified in the prepayment application to establish a Closing Date. The FFB will inform the Borrower of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, as of the Closing Date established. The determination by the FFB of the final amount of the Total Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be conclusive.

(2) On the Closing Date, the Guarantee will be attached to the Private Loan Note, the Private Loan will be funded, and the Total Permitted Prepayment Amount, or the portion

thereof which the Borrower has selected to prepay, will be prepaid.

(3) The attachment of the Guarantee to the Private Loan Note will take place at such location as may be designated by the unanimous agreement of the Borrower, the Private Lender, and DSAA.

(4) Prior to 1:00 p.m. prevailing local time in New York, New York, on the Closing Date, immediately available funds in amounts sufficient to prepay at par the Permitted Prepayment Amount, or the portion thereof which the Borrower has selected to prepay, shall be transferred by electronic funds transfer to the Treasury Department account at the Federal Reserve Bank of New York. The funds transfer message must include the following credit information:

United States Treasury
New York, New York
021030004
TREAS NYC/ (20180006)
For credit to the Federal Financing Bank
Room 143
Liberty Center Building
401 14th Street SW
Washington, D.C. 20227

This information must be *exactly* in this form (including spacing between words and numbers) to insure timely receipt by the FFB. Checks, drafts, and other orders for payment will not be accepted.

Subpart D—Form of Private Loan

§ 25.400 Loan provisions.

The principal and interest payment schedule and maturity of the Private Loan must be substantially the same as the payment schedules and maturities of the Eligible FMS Loans or Eligible FMS Advances, as the case may be, with respect to which the amounts thereof permitted by this part to be prepaid are to be prepaid with the proceeds of the Private Loan. A Private Lender which proposes to make a Private Loan, the proceeds of which will be used to prepay the amounts permitted by this part to be prepaid of Eligible FMS Loans or Eligible FMS Advances, as the case may be, having differing payment structures and maturities, may consolidate those differing payment structures and maturities into a single payment structure having substantially equal semi-annual payments, one set of semi-annual payment dates, and a final maturity date the same as the approximate weighted average of the maturities of the Eligible FMS Loans or Eligible FMS Advances with respect to which the Borrower has selected to prepay amounts thereof permitted by this part to be prepaid.

§ 25.401 Fees.

The interest rate on the Private Loan may include compensation for costs at prevailing market rates with the agreement of the Borrower and the Private Lender selected by the Borrower.

§ 25.402 Transferability.

Each Private Loan Note, with the Guarantee attached, shall be fully and freely transferable.

§ 25.403 Registration.

The Guarantee shall cease to be effective to the extent that the Private Loan, or any portion or derivative thereof, is to be used to provide significant support for a Non-Registered Obligation.

§ 25.404 Non-separability.

The Guarantee shall cease to be effective if the 90 percent guaranteed portion of the Private Loan (or any portion thereof) is at any time separated from the ten percent unguaranteed portion of the Private Loan (or any portion thereof) in any way, directly or through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the Private Loan (or any portion thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest in the guaranteed portion of the Private Loan (or any portion thereof). The 90 percent guaranteed portion of the Private Loan (or any portion or derivative thereof) may not at any time be separated from the ten percent unguaranteed portion of the Private Loan (or any portion or derivative thereof) in any way, directly or indirectly, including without limitation through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the Private Loan (or any portion or derivative thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest on the guaranteed portion of the Private Loan (or any portion or derivative thereof), such that any holder of the Private Loan Note, or any portion thereof, or any derivative thereof representing a direct or indirect claim to payment made from payments on the Private Loan Note, would receive more than 90 percent of any payment due to such holder from payments made under the Guarantee at any time during the term of the Private Loan.

§ 25.405 Collateralization of unguaranteed portion.

The Guarantee shall cease to be effective if the ten percent unguaranteed portion of the Private Loan becomes collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly, by an obligation or obligations of the United States Government or any of its agencies.

§ 25.406 Form of guarantee.

(a) The Guarantee that will be attached to the Private Loan Note on the Closing Date shall be in the following form:

FOR VALUE RECEIVED, the Defense Security Assistance Agency of the Department of Defense ("DSAA"), hereby guarantees to *(Name of Lender)* ("Lender"), incorporated under the laws of (*U.S. State or other jurisdiction*) or if not so incorporated or organized, then the principal place of doing business is (*U.S. location, address, and zip code*), under the authority of Section 24 of the Arms Export Control Act, as amended ("Act"), the due and punctual payment of ninety percent (90%) of amounts due: (1) On the promissory note ("Note") in the principal amount of up to $_____ dated _____ issued to the Lender by the Government of *(Name of Borrower)* ("Borrower") pursuant to the Loan Agreement between the Lender and the Borrower dated the __th day of _____ ("Agreement"); and (2) the Lender from the Borrower pursuant to the Agreement.

This Guaranty is a guaranty of payment covering all political and credit risks of nonpayment, including any nonpayments arising out of any claim which the Borrower may now or hereafter have against any person, corporation, or other entity (including without limitation, the United States, the Lender, and any supplier of defense items) in connection with any transaction, for any reason whatsoever. This Guaranty shall inure to the benefit of and shall be enforceable by the Lender, its successors or assigns. This Guaranty shall not be impaired by any law, regulation or decree of the Borrower now or hereafter in effect which might in any manner change any of the terms of the Note or Agreement. The obligation of DSAA hereunder shall be binding irrespective of the irregularity, invalidity or unenforceability under any laws, regulations or decrees of the Borrower of the Note, the Agreement or other instruments related thereto.

DSAA hereby waives diligence, demand, protest, presentment and any requirement that the Lender exhaust any right or power to take any action against the Borrower and any

notice of any kind whatsoever other than the demand for payment required to be given to DSAA hereunder in the event of default on a payment due under the Note.

In the event of failure of the Borrower to make payment, when and as due, of any installment of principal or interest under the Note, the DSAA shall make payment immediately to the Lender upon demand to the DSAA after the Borrower's failure to pay has continued for 10 calendar days. The amount payable under this Guaranty shall be ninety percent (90%) of the amount of the overdue installment of principal and interest, plus ninety percent (90%) of any and all late charges and interest thereon as provided in the Agreement. Upon payment by DSAA to the Lender, the Lender will assign to DSAA, without recourse or warranty, ninety percent (90%) of all of its rights in the Note and the Agreement with respect to such payment.

In the event of a default under the Agreement or the Note by the Borrower and so long as this Guaranty is in effect and the DSAA is not in default hereunder:

(i) The Lender or other holder of the Note shall not accelerate or reschedule payment of the principal or interest on the Note or any other note of the Borrower guaranteed by DSAA except with the written approval of DSAA; and

(ii) The Lender shall, if so directed by DSAA, invoke the default provisions of the Agreement.

Subject to the limitations set forth below, the Lender's rights under this Guaranty may be assigned to any individual, corporation, partnership, or other association doing business in the United States of America. In the event of such assignment DSAA shall be promptly notified. The Lender will not agree to any material amendment of the Agreement or Note or consent to any material deviation from the provisions thereof without the prior written consent of DSAA.

The successors and assigns of the Lender under this Guaranty ("Beneficiaries") shall be severally bound by, and shall be severally entitled to, the rights and obligations of the Lender under the Note, the Agreement, and this Guaranty. The Lender shall maintain a current, accurate written record of the names, addresses, amount of financial interest in the Note and Agreement, and date of acquisition of such interest of each Beneficiary, and shall furnish DSAA a copy of such record on its demand without charge. No assignment by the Lender or by any Beneficiary shall be effective for purposes of this Guaranty unless and until so recorded by the Lender.

The total amount of this Guaranty shall not at any time exceed ninety percent (90%) of the outstanding principal, unpaid accrued interest and arrearages, if any, under the Note and Agreement, including any portion or derivative thereof.

This Guaranty shall cease to be effective if the ninety percent guaranteed portion of the total amount of the Note (or any portion thereof) is at any time separated from the ten percent unguaranteed portion of the total amount of the Note (or any portion thereof) in any way, directly or through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the total amount of the Note (or any portion thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest in the guaranteed portion of the total amount of the Note (or any portion thereof). The ninety percent guaranteed portion of the total amount of the Note (or any portion or derivative thereof) may not at any time be separated from the ten percent unguaranteed portion of the total amount of the Note (or any portion or derivative thereof) in any way, directly or indirectly, including without limitation through the issuance of participation shares or undivided ownership interests which have an exclusive or preferred claim to the guaranteed portion of the total amount of the Note (or any portion or derivative thereof) or through the issuance of notes, bonds or other obligations collateralized by an exclusive or prior security interest in the guaranteed portion of the total amount of the Note (or any portion or derivative thereof), such that any holder of the Note, or any portion thereof, or any derivative thereof representing a direct or indirect claim to payment made from payments on the Note, would receive more than ninety percent of any payment due to such holder from payments made under this Guaranty at any time during the term of the Note or the Agreement.

This Guaranty is fully and freely transferable to the eligible assignees set forth above, except that it shall cease to be effective to the extent that the Note or the Agreement or any portion or derivative thereof is used to provide significant support for any non-registered obligation.

This Guaranty shall cease to be effective if the ten percent unguaranteed portion of the total amount of the Note becomes collateralized or secured in any manner whatsoever, in whole or in part, directly or indirectly, by an obligation or obligations of the United States Government or any of its agencies.

The full faith and credit of the United States is pledged to the performance of this Guaranty. No claim which the United States may now or hereafter have against the Lender or any Beneficiary for any reason whatsoever shall affect in any way the right of the Lender or any Beneficiary to receive full and prompt payment of any amount otherwise due under this Guaranty. The United States represents and warrants that (a) it has full power, authority and legal right to execute, deliver and perform this Guaranty, (b) this Guaranty has been executed in accordance with and pursuant to the terms and provisions of Section 24 of the Act and the provisions of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, under the heading "Foreign Military Sales Debt Reform," (c) this Guaranty has been duly executed and delivered by a duly authorized representative of DSAA, and (d) this Guaranty constitutes the valid and legally binding obligations of the United States, enforceable in accordance with the terms hereof.

Any notice, demand, or other communication hereunder shall be deemed to have been given if in writing and actually delivered to the Comptroller, DSAA, the Pentagon, Washington, DC 20301, or the successor, or such other place as may be designated in writing by the Comptroller, DSAA or the successor thereof.

By acceptance of the Note, the Lender agrees to the terms and conditions of this Guaranty.

Dated:_____

By: _____

DIRECTOR, DSAA

(b) The obligations of DSAA under the Guarantee are expressly limited to those obligations contained in the form of Guarantee set forth in paragraph (a) of this section. Any provisions of any agreement relating to the Private Loan purporting to create obligations on the part of DSAA which are inconsistent with the terms of the Guarantee or any other provision of this part shall be unenforceable against DSAA.

§ 25.407 Savings clause.

Nothing in this regulation is intended to authorize any private United States financial institution to engage in any activity not otherwise authorized or permitted for such institution under any applicable laws of the United States, any territory or possession of the United States, any State, or the District of Columbia.

Date: March 18, 1988.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 88-6370 Filed 3-21-88; 8:45 am]

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Federal Register

Thursday
March 24, 1988

Part III

Environmental Protection Agency

40 CFR Ch. I

Technical Assistance Grants (Superfund Program); Interim Final Rule, Advance Notice of Rulemaking, and Notice

ENVIRONMENTAL PROTECTION AGENCY

Office of Solid Waste and Emergency Response

40 CFR Part 35

[FRL-3318-4]

Technical Assistance Grants to Groups at National Priorities List Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim Final Rule with Request for Comments.

SUMMARY: Pursuant to section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), the Environmental Protection Agency (EPA or the Agency) published in the **Federal Register** on June 10, 1987 (52 FR 22244) an Advance Notice of Rulemaking (ANRM). This notice discussed and solicited comments on several issues and various approaches that EPA was considering for accepting and evaluating applications, and for awarding and managing technical assistance grants. EPA stated that it would consider those comments in formulating an Interim Final Rule (IFR). Today EPA is publishing the IFR regarding the Technical Assistance Grant Program. Publication of this rule as an IFR with an immediate effective date allows EPA to begin accepting applications from citizens' groups for financial assistance without further delay, while simultaneously accepting comments on, and developing the Final Rule.

Elsewhere in today's **Federal Register**, EPA is also publishing an Advance Notice of Rulemaking (ANRM) to solicit comments from the public on a proposal to provide technical assistance grant applicants and/or recipients with the services of an Administrative Services Contractor (ASC). These services could include both assistance in preparing grant applications and the procurement of technical assistance, and contract management.

DATES: March 24, 1988.

Comments: Written comments must be submitted on or before June 22, 1988.

ADDRESSES: *Written comments must be submitted to:* Superfund Docket Clerk, Office of Emergency and Remedial Response (WH-548D), Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments on today's Interim Final Rule must identify the regulatory docket as follows: "Docket CERCLA 117(e), Technical Assistance Grant Regulation."

Docket: Copies of materials relevant to this rulemaking are contained in the Superfund docket located in the Lower Garage (Room LG-100) at the U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. The docket phone number is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, WH-548E, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 382-2460 or the RCRA/Superfund Hotline from 9:00 a.m. to 4:30 p.m., Monday-Friday, toll free at 1-(800)-424-9436 or in Washington, DC at 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction

A. Authority

This rule is issued under the authority of section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, hereinafter cited as CERCLA, 42 U.S.C. 9617(e). Section 117(e) authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting information related to cleanups at Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order No. 12580 delegated to EPA the authority to implement section 117(e) in consultation with the Attorney General.

B. Background of the Rulemaking

The process of cleaning up a Superfund site requires detailed technical study of site conditions and wastes, analysis of methods and techniques for remediation, and decisions based upon statutory and regulatory factors. In carrying out these cleanups, EPA and States seek informed comment from citizens living near these sites. Recognizing the importance of such comment and the need for citizens to be well-informed at the sites, Congress authorized technical assistance grants under section 117(e) of CERCLA.

This IFR details the specific requirements for obtaining technical assistance grants. To qualify for a grant, an applicant must demonstrate its ability to meet the requirements set forth in the Code of Federal Regulations (CFR) at 40 CFR Part 30 and 40 CFR Part 33, which are EPA's grant and procurement under assistance agreement regulations, respectively. EPA will review and evaluate all applications that demonstrate an ability to meet these requirements, applying the criteria set forth in the IFR for the Technical Assistance Grant Program published today.

The IFR enables EPA to issue grants while continuing to receive comments that will be considered in the

development of the Final Rule. On the effective date of this rule, EPA may begin accepting applications from citizens' groups for financial assistance in hiring technical experts to assess site information independently. To assist potential applicants and other interested citizens in understanding the Technical Assistance Grant Program, EPA will be providing guidance materials such as EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program," as well as training, workshops, and fact sheets on various aspects of the program.

EPA's policy is to involve the States in administering the Technical Assistance Grant Program. Throughout the regulation, the term "EPA" is used. Where the EPA Regional Administrator authorizes the State to administer the Technical Assistance Grant Program under a cooperative agreement, the term "EPA" may mean a State agency. Where States administer the Technical Assistance Grant Program, EPA will have an oversight role.

It should be noted that section 117(e) also applies to Federal facilities, which is defined in the IFR as "a facility that is owned or operated by a department, agency, or instrumentality of the United States," on the National Priorities List (NPL). A technical assistance grant to a group of individuals who may be affected by a release or threatened release at a Federal facility will be governed by this regulation. (See § 35.4125 of the regulation.)

Because this rule relates to public grants, benefits, or contracts, it is exempt from the requirements of section 553 of the Administrative Procedures Act (APA) (5 U.S.C. 553) including notice and opportunity for comment and delayed effective date. However, EPA is interested in receiving public comments. EPA sought public comments on the major issues addressed in this IFR by publishing an ANRM and is seeking comments on this IFR as well in order to develop the Final Rule.

II. Responses to Major Public Comments on Issues Raised in the ANRM and Description of the Rule

A total of 83 written comments were received in response to the ANRM published by EPA on June 10, 1987 (52 FR 22244). Approximately one-third of the comments were received from environmental and community groups; one-third from local and State government agencies; and the final one-third from other commenters such as lawyers, consultants, and academicians. The written comments and a document entitled "Summary Document: Response to Comments on the Advance Notice of Rulemaking on Technical Assistance Grants to Groups at National Priorities List Sites," which summarizes the comments and responses to all the public comments, are available in the public docket for the Technical Assistance Grant ANRM. The major issues addressed by the commenters and EPA's responses to them, as well as a description of the rule, are described below.

A. Groups Capable of Assuming Grant Responsibilities

Under EPA's grant regulations codified at 40 CFR 30.301, EPA can award grants only to groups who can meet minimum administrative and management requirements. Consequently, before EPA can evaluate whether a group is otherwise eligible for a grant under section 117(e) of CERCLA, it must first determine that the group is capable of meeting those administrative and management requirements.

Each applicant must demonstrate that it has established, or has plans for establishing, reliable procedures for recordkeeping and financial accountability related to the management of the grant (e.g., the group has established a separate bank account for the management of the grant funds, has described sound plans for fulfilling the reporting requirements, and has provided any other pertinent information showing its commitment to effective accounting procedures for managing the grant, etc.). Each applicant will be required to provide this information to the Agency in the "Applicant Qualifications" section of Part IV of the grant application, EPA Form 5700–33, "State and Local Nonconstruction Programs," or the appropriate State form. If EPA concludes that the applicant is not capable of meeting the minimum administrative and management capability requirements set forth at 40 CFR 30.301, the application will be rejected.

Additionally, EPA has determined that each grant recipient must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant. An applicant may meet this requirement by stating that the group, if it is not incorporated, has plans for incorporating if it is awarded a grant. Once declared a recipient, the group must affirm that it has filed the necessary papers for incorporation with the State. Furthermore, on or before the first request for reimbursement, the recipient must submit documentation (e.g., letter from the State) that the group has been incorporated officially by the State. Absent such documentation, the grant agreement may be annulled. This issue is discussed further in section II.B.3, "Ineligibility," of this Preamble.

B. Groups Eligible for Grants

Section 117(e) of CERCLA specifically provides that: "the President may make grants available to any group of individuals which may be affected by a release or a threatened release at any facility which is listed on the National Priorities List under the National Contingency Plan * * *" and that, "[n]ot more than one grant may be made under this subsection with respect to a single facility * * *."

This language raises four issues regarding grant eligibility: (1) Defining "affected" groups; (2) determining whether groups can apply individually or must consolidate their applications; (3) determining whether certain groups should be ineligible to receive grants; and (4) determining whether certain community representation should be required of the grantee organization to ensure that broad community interests are represented adquately.

1. Defining "Affected" Groups

The first issue in defining the scope of eligibility is interpreting the phrase "group of individuals which may be affected." The ANRM presented two options:

> Option a. * * * (EPA should) accept applications only from those groups of individuals who can demonstrate direct ties to the site (e.g., individuals who are directly threatened by the site from a health or economic standpoint); or
>
> Option b. * * * (EPA should) allow the involvement of groups with more distant connections to the site (e.g., the same watershed use), in addition to those groups next to the site.

The vast majority of public comments favored defining "affected" groups as those groups of individuals with direct ties to the site, particularly those facing actual or potential health and/or economic impacts. Several commenters suggested that groups with more distant geographic connections to the site should be eligible, provided that no groups in close proximity to the site applied for a technical assistance grant.

EPA, as set forth at § 35.4010 of the regulation, defines "affected" groups as those groups of individuals who can demonstrate that they are threatened by the site from a health, economic, or environmental standpoint. EPA will use evaluation criteria to measure whether, and to what extent, an applicant meets this standard.

Evaluation Criteria. Applicants will describe in a short narrative in the "Applicant Qualifications" section of the grant application how they will meet each of the criteria described below. Applicants, however, will not be required initially to submit documentation. They may be required to supply it later if a pre-award review or an audit is initiated.

EPA will evaluate the strengths and weaknesses of each application. In the event of competing applications, EPA will rank each application relative to other applications since only one grant may be awarded for any eligible site. EPA will do this utilizing five criteria. Each criterion is assigned a weight showing the relative importance of that criterion. The primary purpose of CERCLA is the protection of human health; therefore, the health criteria has the most weight. Since the purpose of section 117(e) is the furthering of public participation, broad representation of affected groups, the ability to use technical assistance grants effectively, and information dissemination have the second highest weights. The last criterion includes two other concerns of the public, economic and environmental impacts.

The extent to which an applicant meets each criterion will be assigned a score ranging from zero (totally deficient) to four (excellent). After evaluating individual criterion, the scores will be multiplied by the assigned weight. Finally, the scores for each criterion will be added to determine the total score for the application. The maximum score that an application can receive is 400 points (5 criteria which total 100 points × a perfect score of 4 on each criterion = 400 total points). For example, the maximum score that an application can receive on the health criterion discussed below would be 120 points (4 × 30 points = 120).

In general, each criterion will be evaluated according to the scoring plan outlined below:

Value	Description
0	Not addressed or totally deficient.
1	Poor.
2	Fair.
3	Good.
4	Excellent.

EPA will review applications based on the following criteria (see § 35.4035 of the regulation):

(a) The presence of an actual or potential health threat posed to group members by the site. (30 points)

To help ensure that groups receiving grants are those most directly affected by a site, an applicant group must include a statement of no more than one page describing the actual or potential health threats posed to group members by the site, the number of group members facing such threats, and, where appropriate, any past actions taken by group members to resolve or to make known their health concerns through letters to local, State, or Federal officials, petitions for health assessments, etc.

A group may meet this criterion by establishing that its members are subject to a demonstrable health threat, whether actual or potential, or a threat that is reasonably believed to be substantial. Not all health concerns will be assigned equal value. Thus, for example, an applicant claiming the presence of a demonstrable health threat ordinarily will receive a higher score than one whose claims are based solely on a potential threat. An applicant's inability to provide documentation of health problems related to the site will not necessarily prevent that applicant from receiving a grant provided the other criteria are met.

(b) The applicant best represents groups and individuals affected by the site. (20 points)

To help ensure that an applicant is representative of groups and individuals affected by the site, this criterion considers the number and diversity of affected organizations and individuals represented within an applicant group (e.g., site neighborhood groups, community groups, local chapters of national or State public interest groups, local health awareness groups, nearby property owners, etc.) in relation to the number of affected groups in the community. An applicant must document in no more than one page the extent to which it represents affected groups and individuals in the community and explain how it plans to involve other affected community groups and individuals who express an interest in joining the coalition after the award of the grant.

Additionally, where appropriate, an applicant may discuss as part of the narrative past activities (e.g., letters, attendance at meetings, conferences, and hearings) conducted by the group or by individual group members that are directly related to the site for which the group is applying for a grant. Broad representation, the intent and the ability to involve other affected groups and individuals in the community, and a history of involvement at the site would be awarded a high score, while very narrow representation, the inability or unwillingness to involve others, and no history of involvement would receive a low score.

(c) The identification of how the group plans to use the services of a technical advisor throughout the Superfund response action, which includes all activities from preliminary planning and investigation through operation and maintenance. (20 points)

To help ensure that a technical assistance grant goes to the community group that is in greatest need of the services of a technical advisor and will use grant funds most effectively to assist citizens in understanding the Superfund cleanup process, an applicant must identify in no more than one page how the group intends to use grant funds. An applicant must also submit a schedule that the technical advisor will use to complete certain tasks.

If the applicant establishes that technical assistance is needed to interpret information throughout the Superfund cleanup process, and that the group has plans to use the funds effectively and efficiently to accomplish the intent of the technical assistance grant, the application would be awarded a high score. Conversely, if an applicant is unable to identify a significant or substantial need, or show that the group will use grant funds effectively and efficiently, the application would receive a low score.

(d) The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the technical advisor. (20 points)

To help ensure that a technical assistance grant goes to the community group that will disseminate the information most effectively to the broader community, an applicant must describe or outline the activities the group plans to use to inform other interested community groups and individuals of the technical advisor's findings or interpretations of technical documents. EPA will evaluate an applicant according to its ability and willingness to disseminate information provided by the technical advisor to the broader community. A plan which indicates an inadequate method for disseminating information would be given a low score while one indicating a clear plan for disseminating information to the broader community would be awarded a high score.

(e) The presence of an actual or potential economic threat or threat of impaired use or enjoyment of the environment to group members that is caused by the site. (10 points)

To help ensure that a group receiving a grant is most directly affected by a

site, an applicant must include a statement of no more than one page describing the presence of an actual or potential economic threat posed to group members by the site (e.g., decrease in property value or diminished economic use of property, such as farming, or recreational use). If appropriate, an applicant should also include a discussion of how conditions at the site have adversely affected members' use or enjoyment of the surrounding environment (e.g., aesthetic or recreational value). In addition, the applicant must include the number of group members affected, and a discussion of the actions taken by them to resolve or to make known their economic and/or environmental concerns through letters to local, State, or Federal officials, meetings with real estate agents, etc.

A group may meet this criterion by establishing that its members are subject to a demonstrable economic threat, or impairment of their use and enjoyment of the environment, whether actual or potential, or a threat that is reasonably believed to be substantial. Not all economic or environmental concerns will be assigned equal value. Thus, for example, an applicant claiming the presence of a demonstrable economic or environmental threat ordinarily will receive a higher score than one whose claims are based solely on a potential threat. An applicant's inability to provide documentation of economic or environmental problems related to the site will not necessarily prevent that applicant from receiving a grant provided other criteria are met.

2. Consolidation

Section 117(e)(2) states that, "[n]ot more than one grant may be made under this subsection with respect to a single facility * * *." Thus, only one group can receive a technical assistance grant at any particular site although a variety of divergent groups potentially could apply for the single available grant. Consequently, the ANRM sought public comments on various alternatives to encourage the consolidation of applications. The alternatives posed were:

Option a. * * * (EPA should) accept only one grant application from each site. If more than one were received, then no grant would be awarded until the groups had combined their applications;

Option b. * * * (EPA should place) a public notice of receipt of an application, e.g., in a local newspaper. The notice would inform others in the community that they have an opportunity to join the original applicant to prepare a single application; or

Option c. * * * (EPA should) accept multiple applications and then fund one that best meets certain eligibility criteria.

Most of the commenters believed that EPA should encourage but not require consolidation, and several stated that EPA should publish a public notice after an application has been received so that other potential applicants could consolidate with the first applicant. Several commenters believed that if consolidation proved impossible, then EPA should accept multiple applications and choose one based solely on the merits of each application. Several commenters suggested that EPA should promote the consolidation of groups by providing facilitators.

(a) Forming coalitions. EPA agrees with the public comments on consolidation and therefore, through the use of the five criteria described above, will encourage but not require consolidation. Thus, an applicant's ability to make technical assistance available to a larger number of interested individuals in an affected community, broad representation of groups and individuals affected by the site, and plans for establishing procedures for disseminating a technical advisor's findings or interpretations of technical documents to the community are all important factors in the evaluation of applications. Ordinarily, consolidated applications will be evaluated more favorably than applications from unconsolidated groups. As for the use of facilitators, EPA, at its discretion, may provide facilitators under certain limited circumstances. Generally, it shall be the responsibility of the groups to form their own coalition.

(b) Notification process. EPA agrees with the commenters that a notification process is essential to provide equal access to technical assistance, and to encourage consolidation. By utilizing a formal notification process, EPA intends to ensure that all eligible groups have equal access to technical assistance and an equal opportunity to compete for the single available grant if consolidation proves to be impossible. EPA believes that a notification process will help identify interested groups enabling them to form coalitions, thereby avoiding delays in the award of a grant which could result from the review of competing applications.

Groups wishing to apply for a technical assistance grant must first submit a letter of intent to EPA. The purpose of the letter of intent is to advise EPA of the group's interest in applying for a technical assistance grant and to trigger a formal process for notifying other interested parties of the fact that an application will soon be filed. EPA will respond in writing to a letter of intent. A formal grant application from an affected group that has not submitted a letter of intent will be considered a letter of intent for the purposes of this regulation.

Upon receipt of the first letter of intent, EPA will undertake certain activities depending on the schedule for response activities at the site. If commencement of the remedial investigation or a removal action is not underway or scheduled to begin for several years, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA may informally notify other interested groups that it has received a letter of intent.

If a response action is already underway or scheduled to begin, EPA will conduct one or more of the following activities—mailings, meetings, and public notices—to provide formal notice to other interested parties that a grant for the site soon may be awarded. While no scheduled or actual site work will be delayed or interrupted, EPA will make every effort to initiate these activities far enough in advance of the start of the response action to allow time for groups to consolidate, apply for and receive a grant award, and procure a technical advisor before work commences at the site.

Once EPA receives a letter of intent and begins the formal notification process, other potential applicants will have 30 days to contact the original applicant to form a coalition. If the community groups are unable to form a coalition, they must notify EPA within this time period. EPA will then accept separate applications from all interested groups for an additional 30-day period. EPA may consider written requests for an extension of this time. A technical assistance grant will be awarded to a qualified applicant from among the competing applications based on the criteria described above. The schedule for response activities at a site will not be affected by the technical assistance grant application process.

3. Ineligibility

The ANRM provided the following issues for consideration under the subcategory "Ineligibility."

Issue a. EPA questions whether municipalities meet the definition of group of individuals, and therefore would be eligible to receive a grant under this section;

Issue b. There are other groups which EPA believes may not be appropriate grant applicants. For example, should a party who

is potentially responsible for cleanup costs at the site be considered in the award of a grant? Similarly, national or State associations, with broad policy interests rather than local concerns, might be ineligible. Other possible exclusions might be academic institutions, profit-making organizations, local government advisory groups or citizen advisory groups; and

Issue c. * * * EPA is seeking comment on whether a group's organization status is a good indicator of which groups will be able to manage better the financial and other obligations associated with an EPA assistance agreement. If EPA requires its grantees to be incorporated, does the entire coalition have to incorporate or can one of the coalition member groups, which is incorporated, be the grant recipient?

Nearly all of those commenting agreed that potentially responsible parties (PRPs) should not be eligible for grants. The public commenters diverged, however, on the role of municipalities. Many of those commenting, primarily representatives from State and local governments, believed that municipalities should be eligible because they could provide financial management assistance. A greater number of those commenting, however, believed that municipalities should be ineligible. Many commenters stated that profit-making organizations, academic institutions, and the headquarters offices of national and State public interest groups, particularly those without local affiliates or chapters at the site, also should be ineligible.

EPA, as set forth at § 35.4030 of the regulation, agrees with the public comments regarding PRPs and has determined that PRPs should be ineligible to receive technical assistance grants. EPA also notes that section 117(e) of CERCLA authorizes a technical assistance grant only to a "group of individuals * * * affected by a release" at a Superfund site. It is EPA's view that this language authorizes the award of a technical assistance grant only to an organization formed for the specific purpose of representing these affected individuals. This interpretation is supported by the legislative history of CERCLA, as amended, and serves to exclude from eligibility, organizations formed for purposes other than representing the interests of affected individuals, such as academic institutions, political subdivisions, groups established and/or sustained by political subdivisions, or corporations that are not incorporated for the sole purpose of representing affected individuals at the site.

Moreover, individuals functioning as representatives of ineligible entities cannot be members of recipient groups. However, nothing in this regulation precludes an individual from participating as a member of a recipient group while acting solely in the capacity of an "affected" individual.

In the ANRM, EPA also sought comments on whether a technical assistance grant recipient should be required to incorporate. EPA stated that "[e]xisting regulations allow grant funds to be awarded to both incorporated and unincorporated entities." Several commenters stated that incorporation should be required, while a few disagreed.

EPA's analysis concluded that incorporation offers advantages to both recipients and EPA, and does so at relatively little cost to both. Incorporation protects individual group members from potentially serious personal liability problems that may result if the technical assistance grant is awarded to a group or organization that is not incorporated. It also reduces or eliminates problems that might otherwise arise from the departure of any individual from the recipient group, if it lacked the structure created by incorporation. EPA also benefits from awarding every grant to a group with the same legal status: a corporation with by-laws, officers, and official purposes.

EPA, as set forth at § 35.4020(b) in the regulation, has therefore determined that the group receiving a technical assistance grant must be a non-profit corporation that includes all the individuals and groups that joined in applying for the grant and is incorporated for the purpose of addressing the Superfund site for which the grant is to be awarded. At the time of the award, a recipient must either be incorporated or demonstrate that it has taken all necessary and appropriate actions to incorporate. Thus, applicants are not required to be incorporated at the time that the application is submitted; only recipients of technical assistance grant awards must be incorporated. However, the recipient must submit proof that the group has been incorporated by the State no later than the time of the group's first request for reimbursement for costs incurred.

Based upon a survey of several States, EPA has established that the process of incorporation is relatively quick, easy, and inexpensive. Nevertheless, to reduce even these minimal burdens, EPA has decided that when a recipient has incorporated for the sole purpose of receiving a technical assistance grant, necessary and reasonable costs of incorporation will be considered an eligible pre-award cost and may be charged to the grant as set forth in § 35.4075(b) of the regulation or counted towards the matching funds requirement which is discussed later in Section F, "Waivers of the Matching Funds Requirement," of this Preamble.

4. Representation

The ANRM also raised for discussion what action EPA should take to ensure that a broad-based representation of affected groups is achieved when groups consolidate to apply for a grant. The specific issues raised by the ANRM were:

Issue a. Should coalitions or groups include individuals, who are otherwise excluded from receiving grants? For example, should representatives of the municipal or county governments or potentially responsible parties (PRPs) be routinely included or should inclusion be by invitation only of the grant recipient?

Issue b. EPA specifically seeks comments on possible roles for local government in this program. For example, should a local government routinely, or at only the recipient's request, participate in management of the grant including monitoring fiscal aspects of the grant? Other potential roles for involving local governments may include helping citizen groups coalesce to prepare a single application, and providing expert advice; and

Issue c. * * * (W)hether to ensure that groups receiving grants should be representative of a broad range of community interests, and, if so, how this can be achieved.

The public comments emphasized that achieving broad representation should be encouraged, but not required. EPA concurs with those comments, and reiterates its desire to encourage broad representation of affected groups whenever possible. EPA believes further that given the finite nature of the financial assistance provided, technical assistance should be available to as broad a range of affected groups as possible. To encourage this process, EPA will favor coalitions of affected citizens' groups and community residents through the use of the criteria previously outlined.

EPA has determined that groups that are ineligible to receive technical assistance grants directly should also be ineligible to participate in coalitions that receive grants. Similarly, representatives of ineligible entities may not participate in coalitions. As noted above, individuals who are "affected" by a site may join a coalition, so long as they are acting only as individuals and not as representatives of ineligible entities.

C. When Grants May Be Available

Section 117(e) of CERCLA authorizes technical assistance grants for sites listed on the NPL under the National Contingency Plan (NCP). For many sites

on the NPL, the Agency has not yet begun remedial investigations, raising the question whether technical assistance grants should be awarded at such sites.

The purpose of a technical assistance grant as stated in section 117(e) is to provide recipients with "information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility." Thus, the commencement of a remedial investigation or a removal action at a site could be viewed as a prerequisite for a technical assistance grant.

The ANRM provided two alternatives for public comment concerning when grants should be made available during the Superfund cleanup process:

> Option a. * * * (EPA should) accept applications only for sites where a remedial investigation or feasibility study and/or design and remedial action are underway, or are planned to begin within one year on EPA's annual Superfund Comprehensive Accomplishments Plan (SCAP) (an annual plan of site work scheduled to be undertaken during the coming fiscal year); or
>
> Option b. * * * (EPA should) accept applications at any time after a site has been listed on the final NPL.

The vast majority of those commenting recommended that groups should be allowed to submit a technical assistance grant application as soon as a site is listed on the NPL. Most of the commenters believed that such timing was needed to allow sufficient time for groups to attempt to consolidate with other groups, to prepare applications, and to obtain a technical advisor before work at the site commences. Many commenters suggested that technical assistance grant monies should be available only after the remedial investigation (RI) has begun or is scheduled to begin, or within a year prior to the commencement of the RI. Several commenters suggested that, while applications should be accepted as soon as the site is listed on the NPL, grant funds should not be made available until the RI has begun.

EPA, as reflected at § 35.4050 of the regulation, agrees with the commenters and has determined that groups may submit letters of intent at any time after a site is listed on the NPL or proposed for listing where a response action has begun. The earliest technical assistance grant monies would be available for these sites, however, is at the start of the response action. Therefore, the earliest a formal grant application will be accepted is just prior to the start of the response action. The phrase "start of the response action" means the guarantee or set aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin the remedial investigation, or other response activities at a site, such as a removal. EPA's annual Superfund Comprehensive Accomplishments Plan (SCAP) identifies the sites where project work is planned during the coming year.

EPA believes this approach ensures sufficient time for interested groups to consolidate and to apply formally because several months usually pass between the guarantee or set aside of the funds and the development of a work plan and commencement of work at the site. Such a schedule gives EPA an opportunity to process the grant application carefully and the grant recipient sufficient time to obtain the services of a technical advisor before work at the site actually begins. Technical work at a site will not be delayed pending the award of a technical assistance grant.

The Superfund cleanup process typically involves the remedial investigation and feasibility study, the selection and construction of remedial action, the operation and maintenance of the remedy, or removal action at a remedial site. The RI/FS is the most important point in the process for public participation. Therefore, EPA believes it should establish priorities for processing grant applications in light of key decision points in a cleanup process and the immediate need for technical assistance in some instances. Accordingly, applications from sites where RI/FS work is already underway or scheduled to begin in the near future will have priority over other applications. These applications will be considered first so that the citizens with the most immediate need for technical assistance at the most significant point in the process are given first consideration.

Technical assistance grants will be awarded depending upon the availability of funds within the Superfund program. The Technical Assistance Grant Program is discretionary and may be affected by requirements of higher priority activities. When funds are limited, EPA will set priorities among sites where grants will be awarded. Factors that EPA may use in ranking the sites include, but are not limited to: the risk to citizens' health or welfare presented by the site; the stage in the Superfund cleanup process; the history of public involvement at the site; and the environmental threat presented by the site. For example, EPA may give priority consideration to funding a grant at a site where the community has already been required to use bottled water or residents have been temporarily relocated, where the RI/FS is beginning, where there is a history of community concerns, and where site work is technically complex and is divided into numerous operable units.

There are other criteria that could be considered in setting priorities among sites for a technical assistance grant award when funds are limited, such as the use of a grant applicant's financial need. Elements that could be considered in calculating financial need include: below average per capita income, high unemployment rate in the area, and below average median household income. Comments are invited on the use of these and other priority-setting mechanisms in determining a technical assistance grant award when funds are limited.

Commenters did not distinguish between "proposed" and "final" listings on the NPL. Under CERCLA section 117(e), a technical assistance grant may be made available to a group affected by a release or threatened release "at any facility which is listed on the National Priorities List under the National Contingency Plan." A possible reading of this language is that it constitutes an absolute bar to a technical assistance grant at any site not formally included on the final NPL. This would preclude a technical assistance grant at a site that has met the rigorous eligibility criteria established in the NCP (40 CFR Part 300) and has been only formally proposed for inclusion on the NPL even if work were actually underway at the site under the authority of CERCLA section 104(b).

Such a result would frustrate the expressed intent of Congress that technical assistance grants be used to help recipients become "involved *from the beginning* in determining the actions which will be necessary to complete the cleanup" of the facility. (H. Rep. 99–253, 99th Cong., 1st Sess. (1985) (Part III) (Report from Committee on Judiciary) (adopting language of report of Energy and Commerce Committee) (emphasis added.)) A 1987 Senate Committee report confirms that section 117(e) was intended to authorize grants at both "proposed and final (NPL) sites" (Senate Report to accompany H.R. 2783, Department of Housing and Urban Development—Independent Agencies Appropriations Bill, 1988; October 6, 1987, p. 49.).

Rather than construing section 117(e) in a manner that would permit results inconsistent with this unequivocal

expression of Congressional intent, EPA has concluded that technical assistance grants may be made available at sites formally proposed for inclusion on the NPL where a response action actually is underway.

D. Activities Eligible for Grants

EPA must determine the specific activities that are eligible for technical assistance grants. CERCLA section 117(e)(1) states that "[s]uch grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal action at such facility." The ANRM provided the following three alternatives for public comment:

> Option a. * * * (EPA should) fund only the costs of technical advisors hired to interpret publicly available technical information at National Priorities List sites developed by Federal or State agencies (or their contractors) or potentially responsible parties;
>
> Option b. * * * (EPA should) fund activities, in addition to interpreting Agency documents, that would contribute to the public's understanding of overall site activities and decision-making; and
>
> Option c. * * * (EPA should consider) other options for activities that should be eligible for funding and which ones, if any, should be limited or excluded.

The majority of commenters agreed that EPA should use the Technical Assistance Grant Program to fund the broadest range of activities that would contribute to the public's ability to participate in the decisionmaking process by understanding site conditions and activities. Some commenters suggested that eligible expenses for the technical advisor include costs for meetings, travel, and overhead costs. Other commenters suggested that testing, sampling, and monitoring also be included as eligible activities. (See further discussion in Section E, "Activities Ineligible for Grants," of this Preamble.)

EPA, as set forth at § 35.4060 of the regulation, agrees with the position favored by the public that technical assistance grants should be used to interpret site-related documents and other activities that would contribute to the public's understanding of overall site conditions and activities. Examples of technical advisor activities eligible for funding include:

(a) Reviewing site-related documents, whether produced by EPA or others;

(b) Meeting with the recipient group to explain technical information;

(c) Providing assistance to the grant recipient in communicating the group's site-related concerns;

(d) Disseminating interpretations of technical information to the community;

(e) Participating in site visits, when possible, to gain a better understanding of site conditions and activities; and

(f) Traveling to meetings and hearings directly related to the situation at the site.

E. Activities Ineligible for Grants

EPA also must determine the specific activities that are ineligible for technical assistance grants. The ANRM provided this point of clarification regarding restricting the use of grant funds for public comment:

> * * * Technical assistance grants are not intended to be used to underwrite legal actions. EPA believes it would be inappropriate to allow costs incurred by a community group in preparing for or participating in any adjudicatory proceeding to be paid from a technical assistance grant.

All of those who commented on ineligible activities agreed that grant funds should not be used to "underwrite legal actions." Several commenters suggested that the collection of background information and site visits or travel by a technical advisor also should be considered ineligible.

The legislative history of section 117(e) provides that technical assistance grants "are not intended to be used to underwrite legal actions. However, any information developed through grant assistance may be used in any legal action affecting the facility, including any legal action in a court of law." (H. Rept. No. 99-962, 99th Cong., 2d Sess. (1986), p. 231.) Thus, technical assistance grant funds may not be used to pay for attorney's fees or for time the technical advisor may spend assisting an attorney in preparing a legal action (e.g., citizen suit) or preparing for and serving as an expert witness at any legal proceeding (public meetings scheduled by EPA or a State are not considered legal proceedings). Moreover, technical assistance grant funds may not be used in preparation for or participation in any legal proceeding. For example, an attorney's costs for locating, interviewing, or preparing a witness to testify, or the time that any witness spends preparing for any such legal proceeding may not be paid for with technical assistance grant funds. However, these prohibitions on the use of technical assistance grant funds do not preclude a technical advisor from participating in a legal proceeding so long as none of the costs of participation are charged to the technical assistance grant.

In addition, other activities, as set forth at § 35.4055 of this regulation, that are ineligible for technical assistance grant funding include: activities inconsistent with the cost principles stated in the Office of Management and Budget (OMB) Circular A-122 including lobbying and related activities; tuition of other expenses for recipient group members or technical advisors to attend training, seminars or courses; any activities or expenditures for recipient group members' travel; and generation of new primary data such as well drilling and testing (including split sampling). EPA also has determined that while technical assistance grant funds may be used for interpreting site-related technical documents and studies, they may not be used to challenge final Agency decisions (e.g., Records of Decision). Finally, technical assistance grant funds may not be used to underwrite disputes with EPA.

EPA calls particular attention to the prohibition on the use of technical assistance grant funds for lobbying and political activities (see 40 CFR 30.601). Briefly summarized, this prohibition means that technical assistance grant funds cannot be used to participate in or attempt to influence the outcome of any election or to influence the introduction, enactment, or modification of any legislation. Similarly, technical assistance grants funds may not be associated with any partisan or non-partisan political activity. The prohibition against political activities and lobbying is discussed more fully in OMB Circular A-122, the key sections of which appear in EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program" that has been developed for this program.

Costs associated with tuition or other expenses for recipient group members or technical advisors to attend training, seminars or courses, and any activities or expenditures for recipient group members' travel are not allowable. EPA believes that the primary purpose of the technical assistance grant is to assist citizens' groups in obtaining technical assistance and not to fund ancillary activities of the grant recipient such as travel and training, which, by reducing available funds, would detract from or limit the recipient's ability to obtain technical advice regarding remedial actions.

Costs associated with the generation of new primary data are not allowable because this would be inconsistent with Congressional intent of "interpreting information." In addition, developing new primary data, such as sampling data, would be so costly as to diminish

the recipient's ability to obtain technical assistance throughout the entire cleanup process.

Cost associated with disputes with the Agency or challenges to final Agency decisions (e.g., Records or Decision) are not allowable since this also would be inconsistent with Congressional intent or "interpreting information." In order to ensure the best use of limited technical assistance grant funds, costs of administering the grant are allowable to the extent that they do not exceed 15 percent of total project costs.

F. Waivers of the Matching Funds Requirement

Section 117(e)(2) of CERCLA states that "[e]ach grant recipient shall be required, as a condition of the grant, to contribute at least 20 percent of the total costs of the technical assistance for which such grant is made. The President may waive the 20 percent contribution requirement if the grant recipient demonstrates financial need and such waiver is necessary to facilitate public participation in the selection of remedial action at the facility."

This language clearly expresses the intent of Congress that the affected community's ability to pay should affect the size of the match for the technical assistance grant. In today's regulation, EPA is setting the matching funds requirement at a figure of 35 percent of total project costs. EPA invites comments on how to develop a workable system for determining the matching share based on financial need and other factors for inclusion in the Final Rule. As discussed later in the Preamble, this IFR provides for a total waiver of the matching funds requirement in exceptional circumstances.

Thus, each grant recipient must contribute 35 percent of the total project costs. For example, if total project costs will be $20,000, then the group would have to provide at least $7,000 (35 percent of $20,000) to "match" the Agency's grant of $13,000. Absent specific statutory authority, recipients may not use other Federal funds to meet the "match" requirement.

The ANRM requested comment on whether EPA should consider, and under what circumstances provide, waivers of the matching funds requirement. The Agency considered four options. First, if the Agency allows in-kind contributions to be used, waivers of the match might not be appropriate at all. If waivers are used, EPA will develop criteria to determine the basis on which waivers of the matching fund requirement may be provided. One option for doing so is for the Agency to establish a single waiver standard, such as per capita income, to identify recipients with financial need. A second option would be for the Agency to use a set of criteria, instead of a single measure, to determine financial need. Possible criteria might include a combination of such measures as per capita income, median household income, and demonstrated efforts to raise funds and in-kind contributions from State and local governments as well as private citizens. A third option might be simply to allow groups the opportunity to present whatever evidence of financial need they deem relevant in their waiver application. Finally, EPA could decide to grant partial waivers to groups able to raise part, but not all, of the match contribution.

A majority of commenters suggested that EPA grant waivers of the matching funds requirement, and allow in-kind contributions to meet the matching funds requirement. Many of these suggested that the financial need of the grant recipient was an appropriate criterion for determining whether a waiver of the "match" is justified. A small number of commenters felt that no waivers should be granted.

In-kind contributions are the recipient's non-cash contributions, such as the value of donated goods (e.g., office space) and services (e.g., an accountant's time or management of the technical advisor contract) that are properly allocable to and allowable under the given project. In-kind contributions can reduce the need for groups to raise money in order to receive assistance and therefore reduce and probably eliminate the need for waivers.

EPA, as set forth at § 35.4085(a)(2) of the regulation, agrees with the commenters and notes that in-kind contributions may be used as a "match" in accordance with 40 CFR 30.307(b). EPA will count toward the matching funds requirement any allowable in-kind contributions which are necessary to implement the technical assistance grant project, such as the recipient's project manager's time for managing the technical advisor contract; or the professional services of an accountant for maintaining the group's books and producing financial reports; or telephone calls; or copying.

Because in-kind contributions can be counted toward the "match," waivers of the 35 percent matching funds requirement will be granted only in exceptional cases. A waiver should be requested in writing only when it becomes apparent that the grant recipient cannot meet the matching funds requirement. The Agency may waive part or all of the recipient's 35 percent matching funds requirement only after a finding by the Agency that (1) there is a need for a waiver because providing the "match" would constitute an unusual financial hardship, (2) a good faith effort at raising the "match," including obtaining in-kind services, has failed; and (3) the waiver is necessary to facilitate public participation in the selection of a remedial action at the facility. Financial need may be demonstrated by such measures as below average per capita income, below average median household income, or a higher unemployment rate in the area.

Once a group has been awarded a technical assistance grant and signed a grant agreement promising to contribute a specific "match," if it subsequently receives a waiver it is reducing its contribution. Consequently, the total resources available for technical assistance will be less than the amount specified in the grant agreement. This constitutes a substantial change in the technical assistance grant project, and the grant agreement must be amended as required by 40 CFR Part 30, Subpart G.

Finally, CERCLA section 117(e) authorizes a waiver of the matching funds requirement only where it is needed to ensure the public's "participation in the selection of a remedial action at the facility." Meaningful participation in the selection of a remedial action is not possible, and therefore no waivers will be approved once the Record of Decision (ROD) has been issued for the last operable unit at the site. (An "operable unit" is a term that means an action taken as one part of an overall site response. A number of operable units may occur in the course of a site response.)

G. Waivers of the $50,000 Limit on Grants

Section 117(e) states that "[t]he amount of any grant under this subsection may not exceed $50,000 for a single grant recipient. The President may waive the $50,000 limitation in any case where such waiver is necessary to carry out the purposes of this subsection." The Agency must determine under what circumstances a waiver of the $50,000 limit on grants may be given, recognizing that the language and legislative history of CERCLA strongly suggests that waivers are to be granted as an exception rather than as a rule.

The ANRM discussed circumstances under which the Agency would give a waiver of the $50,000 limit on grants.

The ANRM presented these alternatives for public comment:

Option a. * * * (EPA should) issue waivers only for sites that are deemed significantly more technologically complex than a 'typical' remedial action. Indicators of complexity might include unusual waste type or hydrogeology;

Option b. * * * (EPA should) issue waivers only at sites where unanticipated changes in the remedial action justify a need for additional technical assistance;

Option c. * * * (EPA should) issue waivers to single grant applicants representing groups from several NPL sites in close proximity. The technical assistance grant award could not exceed the sum of the maximum allowable amount for the individual sites involved; and

Option d. * * * (EPA should consider) other criteria that would provide reasonable guidelines for determining when and on what basis to grant waivers of the $50,000 limit.

The majority of commenters suggested that the Agency issue waivers of the $50,000 limit on grants only for sites that are significantly more technologically complex than "typical" sites. Other commenters suggested that the Agency issue waivers of the $50,000 limit (a) when unanticipated changes occur, (b) when the length of the cleanup process is extended, or (c) where groups apply for a grant to provide technical assistance at multiple NPL sites in close proximity to each other.

EPA notes that CERCLA constitutes a broad mandate to clean up hazardous waste sites and provides finite resources for doing so. EPA believes that with careful planning and reasonable management, the maximum $76,923 ($50,000 grant plus the recipient's $26,923 "match") will be sufficient to provide meaningful technical assistance. Consequently, EPA has determined that a waiver of the $50,000 limit at the time that an award is made is appropriate only where a single grant is addressing multiple sites.

Thus, as set forth at § 35.4090(a) of the regulation, where there are several NPL sites in close geographic proximity to each other and an affected group desires to reduce its administrative burden by submitting one application and awarding one set of contracts, the Agency will consider awarding a single technical assistance grant for a sum not exceeding the maximum allowable amount for each of the individual sites involved (e.g., 3 sites × $50,000 = grant of $150,000). In this case, the Agency may waive the limitation that a single recipient cannot receive more than $50,000. The recipient, however, must provide the 35 percent matching funds and is still limited to spending no more than $50,000 of Federal grant funds at any site. Moreover, the application must be based on site specific information for each site involved.

EPA has determined that no other waivers to the technical assistance grant ceiling shall be granted during the period of the IFR. EPA believes that it needs to develop some experience with the Technical Assistance Grant Program in order to determine whether there are circumstances in which it is appropriate to grant waivers. Grant recipients are required to plan and manage the funds to last throughout the Superfund cleanup process so that waivers will not be needed. Waivers will be needed and granted only in the most exceptional circumstances.

H. Conflict of Interest and Disclosure Procedures.

In the ANRM, EPA also solicited comments regarding disclosure and avoidance of potential conflicts of interest. Given the pool of technically qualified individuals or firms available to interpret information concerning Superfund actions, some may have worked for PRPs or have been or can anticipate becoming involved in litigation against EPA. Title 40 CFR 30.613 and 33.270 presently contain regulations pertaining to conflicts of interest on the part of persons selecting a technical advisor. EPA was concerned about what requirements the Technical Assistance Grant Program should impose on technical advisors themselves to ensure that advisors do not have conflicting loyalties that might undermine public confidence in the integrity of their advice. EPA asked:

Option a. * * * Should EPA require prospective technical advisors to disclose in their proposals all financial and business relationships with any potentially responsible parties at Superfund sites so that the grantee can determine if it wants to select the technical advisor? and

Option b. * * * Should the technical advisors be required to inform the citizen group responsible for the grant, EPA, the State, and other interested parties, if they are invited to provide services related to any proposed or pending litigation concerning or arising from the site after award of the grant?

The comments regarding the issue of conflicts of interest in working for a PRP and a community group at the same site generally favored requiring the technical advisor to disclose any potential conflicts of interest by acknowledging activities or relationships, including business or financial, with PRPs.

EPA, as set forth at § 35.4130 of the regulation, agrees with the commenters who suggested that the citizens' groups must have the opportunity to assure themselves of the objectivity, as well as the expertise, of their technical advisors. The regulations, therefore, requires that technical advisors disclose to grant recipients all of their financial and business relationships with all PRPs that are involved at the site for which the grant has been awarded. This disclosure requirement encompasses past and anticipated financial and business relationships (including services related to any proposed or pending litigation) with the PRPs for the subject site, and with their parent companies, subsidiaries, affiliates, subcontractors, and current clients, attorneys, and agents. At any time an undisclosed past or anticipated business relationship is discovered, it must be reported immediately. Technical advisors must certify that, to the best of their knowledge and belief, they have disclosed such information or no such information exists. Technical advisors must also submit a statement that they shall disclose immediately any such information whether discovered after submission of its bid or proposal, or after award.

Disclosure of such a relationship does not automatically preclude the technical advisor from being hired by the recipient. Once full disclosure occurs, the recipient must determine if there is an actual conflict of interest. Where the recipient concludes that there is such a conflict that is significant and cannot be resolved or otherwise avoided, the recipient must reject the prospective contractor. (The issue of conflict of interest and disclosure requirements is discussed further in EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program.")

In an effort to reduce further any conflict of interest problems, EPA has determined that contractors and subcontractors may not apply for positions as technical advisors to recipient groups at the same NPL site for which they are doing work for the Federal or State government or any other entity, since they otherwise would be reviewing their own work.

I. State Involvement in Administering the Technical Assistance Grant Program

The ANRM provided three alternatives for State involvement:

Option a. * * * (EPA should) allow the States to administer the program. Under this option, a participating State would receive and evaluate grant applications from its citizens and administer all aspects of grant management. States also would monitor fiscal management of the grant. The States would consult with EPA prior to awarding a grant; or

Option b. * * * (EPA should allow the) States to administer the program by

cooperative agreement for all State-lead NPL sites, that is, sites at which the State is administering similar elements of the Superfund program such as remedial design and construction activities. EPA would then administer the technical assistance program for all Federal-lead sites. However, a State could volunteer to administer the program for Federal-lead sites. Again, the State would consult with EPA prior to awarding the grant; or

Option c. * * * (EPA should) administer the program entirely at the Federal level during the period that the IFR is effective, i.e., from the promulgation of the IFR to the publication of the Final Rule. After this initial period, the States could administer the program as outlined in the above options.

A majority of the commenters offered suggestions regarding State involvement with the Technical Assistance Grant Program. Most commenters favored EPA control of the program, but with State consultation.

Several commenters suggested that EPA and the States share administration of the program. A small number of commenters recommended that EPA retain full responsibility for the program through the issuance of the Final Rule and then EPA or the State, whichever is administering all elements of the Superfund program at a given NPL site, should administer the technical assistance grant for that site.

Section 121(f) of CERCLA, as amended, mandates that EPA provide for "substantial and meaningful" State involvement in the Superfund process. In keeping with this mandate, EPA has concluded that a State can administer all aspects of the Technical Assistance Grant Program, except for the waiver provisions. Based on the statutory language, the Agency must make all decisions whether to waive either the 35 percent matching funds requirement or the $50,000 limit to the technical assistance grant.

EPA will allow the States to determine for themselves their level of involvement in the Technical Assistance Grant Program. EPA is confident that State governments: are well able to manage the technical assistance grant program; understand the needs of their citizens; and can aid in identifying which groups most accurately reflect community desires, can disseminate most effectively the technical advisor's conclusions to the community, and can best represent the broadest set of local interests among affected citizens.

EPA, as set forth at § 35.4015(a) of the regulation, will initiate the Technical Assistance Grant Program immediately and begin accepting applications for, and awarding technical assistance grants in consultation with the States. Technical assistance grants will be available at an NPL site where (1) a State response action either funded by State dollar or by responsible parties under agreement with the State is scheduled to begin or is underway, and (2) a CERCLA-funded cooperative agreement or other written agreement which exists between the Agency and the State for the site for which the technical assistance grant will be awarded.

At a few NPL sites, States have elected to have work begin absent a written agreement with the Agency and Federal funding from the Trust Fund. Technical assistance grants may be available for these non-Fund financed State response actions at NPL sites where there is no response agreement between EPA and the State. The State, however, must enter into either a cooperative or other written agreement with the Agency for the overall technical activities at the site or for administration of the Technical Assistance Grant Program.

States wishing to be involved in administering the Technical Assistance Grant Program must inform the appropriate EPA Regional Administrator. If a State administers a technical assistance grant, it must do so in conformity with the regulation published today.

Following the guidance in EPA's "State Participation in the Superfund Program" (Vol. 1, OSWER Directive 9375.1-04A, February 1984 with Addendum, May 1987), a State may receive technical assistance grant funds plus administrative costs from EPA under a cooperative agreement. A State will receive $10,000 for administrative costs for the first technical assistance grant. Due to economies of scale, for each subsequent technical assistance grant, a State will receive an amount equal to 8 percent of the grant. Administrative costs include reviewing applications, awarding grants, and reviewing subagreements and financial and progress reports.

The State may provide technical assistance to a recipient group in either of two ways. A State will pass through technical assistance grant funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 35.4080 of this regulation. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with applicable regulations, e.g., 40 CFR Parts 30 and 33.

Alternatively, if a recipient group agrees, a State will use technical assistance grant funds to obtain the services of a technical advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a technical advisor, and managing the technical advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical advisor contracts, submitting financial and progress reports, and for disbursing all technical assistance grant funds in compliance with applicable EPA regulations and requirements.

In addition to the three options in the ANRM, EPA considered two other options for State involvement, i.e., that (1) a State wishing to participate in the Technical Assistance Grant Program must elect to administer the Technical Assistance Grant Program for all sites within its borders or for none, and (2) the agency undertaking the technical activities at any given site, either EPA or the State, would administer the Technical Assistance Grant Program as part of its responsibility at that site. EPA invites comment on these options for State involvement described above in developing the Final Rule.

J. Other

EPA also solicited comments regarding other aspects of the Technical Assistance Grant Program not identified in the ANRM and appreciates the numerous comments offered.

1. Assistance to Communities

Twelve commenters requested that EPA provide guidance materials (such as a citizens' training manual) to communities and prospective applicants. EPA agrees with the commenters and will issue a comprehensive "Citizens' Guidance Manual for the Technical Assistance Grant Program" to assist citizens' groups in applying for and managing the technical assistance grants. It will be available to the public upon publication of this IFR.

EPA also intends to train Superfund/RCRA "hotline" staff on EPA technical assistance grant and procurement issues so that citizens will have a toll-free or local number (1-800-424-9436 or, in Washington, DC, 382-3000) to call for answers to their questions. In addition, EPA Headquarters will provide training and guidance to Regional and State personnel so that they will be fully prepared to implement this program.

2. Qualifications of Technical Advisors

EPA received several comments related to the qualifications of technical advisors. Among the comments received

were: (a) technical advisors should be required to provide credentials and prove qualifications of their ability to perform the work, (b) EPA should impose minimum qualifications for technical advisors, and (c) EPA should impose a certification requirement for technical advisors and require previous Superfund experience as a qualification.

Consistent with EPA procurement regulations set forth at 40 CFR Part 33, EPA believes that grant recipients must determine the standards and criteria appropriate for choosing their technical advisors. The regulation at § 35.4065 identifies the following credentials a technical advisor must possess:

(a) Demonstrated knowledge of hazardous or toxic waste issues;
(b) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and
(c) Ability to translate technical information into terms understandable to lay persons.

The regulation also identifies the following credentials a technical advisor should possess:

(a) Experience working on hazardous or toxic waste problems;
(b) Experience in making technical presentations;
(c) Demonstrated writing skills; and
(d) Previous experience working with citizens' or community groups or other groups of individuals.

3. Grant and Procurement Procedures

Nine commenters requested that EPA streamline the grant and procurement process. Though the Agency is constrained by grant and procurement regulations, EPA is investigating several ways to streamline the process, such as increasing the small purchase order limitation from $10,000 to $25,000, which will reduce some of the administrative work associated with hiring a technical advisor by simplifying the procurement process.

4. Cost Recovery

Cost-recovery is an effort by EPA to recover all costs related to the cleanup at a Superfund site from any individual(s) or company(ies) (such as owners, operators, transporters, or generators) potentially responsible for, or contributing to, the contamination problems at the site.

One commenter stated that "The $50,000 award should not be cost-recoverable from PRPs; it should be considered part of the cost of EPA's Superfund community relations program." EPA does not agree. Superfund community relations costs are recoverable, and technical assistance grants as well as the administrative costs will likewise be subject to cost-recovery from the PRPs.

5. Prior Awards

One commenter stated that "Prior technical assistance provided by public agencies to community groups should be counted as part of the $50,000 award limit." EPA recognizes that technical assistance provided previously was not under the authority of section 117(e) and will not count such assistance as part of the $50,000 award limit under this authority.

6. Indemnification

One commenter stated that "EPA should indemnify a technical expert for non-negligent conduct based upon recommendations made by the expert to the community group. The indemnification would protect technical advisors against all liabilities, State or Federal, unless there is clear evidence of gross negligence or intentional misconduct." Section 119 of CERCLA, as amended, provides EPA's exclusive authority to indemnify persons engaged in CERCLA response activities. Consultants hired by recipients of technical assistance grants are not within the definition of those who can be indemnified by EPA. Moreover, liability claims against technical advisors seem remote in view of their role. Technical advisors will be reviewing and commenting only on site-specific documents. Their recommendations and citizen recommendations based on their work will be considered by EPA or the PRPs as any other public comment would be. Public comments are part of the administrative process. Final decisionmaking authority rests with EPA, however, which ultimately is responsible for actions taken at a Superfund site.

K. Sanctions

If the recipient fails to comply with any of the terms of the grant agreement, EPA may take any of the following measures, as set forth in 40 CFR Part 30, Subpart I, based on the severity of the recipient's misconduct:

(a) Issue a stop-work order;
(b) Withhold payment;
(c) Suspend or terminate the grant agreement for cause;
(d) Annul the grant agreement and secure the return of all grant funds;
(e) Request that the Director, Grants Administration Division, debar or suspend the recipient as an eligible grant recipient;
(f) Take other appropriate administrative action; or
(g) Institute judicial proceedings.

Where States administer the program, EPA will hold them accountable for proper administration of technical assistance grant funds.

See § 35.4070 of this regulation.

L. Disputes

The Agency shall review appeals of EPA or State decisions by the applicant or recipient. An appeal of an EPA decision will be resolved according to EPA regulations at 40 CFR Part 30, Subpart L. EPA can only review a State decision that is final. An appeal of a final State decision will be resolved as prescribed at § 35.4100 of this regulation. Before appealing a State decision, an applicant or recipient must first submit a petition for review to the State agency that made the initial decision.

M. Record Retention

In accordance with 40 CFR 30.501, all records must be maintained by the recipient and the technical advisor for three years or until any audits, litigation, cost-recovery, or disputes initiated before the end of the three-year retention period are settled, whichever is longer. After three years if the recipient intends to dispose of the records, the Agency must be notified in writing and the records must be held until the Agency notifies the recipient as to their disposition. See § 35.4105 of this regulation.

N. Budget Period

The budget period may not exceed three years. A technical assistance grant project period may be comprised of more than one three-year budget period. Certain procedures as described in 40 CFR 30.306 must be followed if the recipient wants to continue the project beyond the initial three-year budget period. The process also is discussed in the "Citizens' Guidance Manual for the Technical Assistance Grant Program."

O. Reimbursement

The Agency is authorized to make payments to grant recipients by (1) letter of credit, (2) by advance, or (3) by reimbursement pursuant to 40 CFR 30.400(b). EPA has determined that the appropriate method of distributing technical assistance grant funds is to reimburse recipients for grant-related costs which have been incurred and which the recipient legally is obligated to pay.

The letter of credit, according to the Treasury Department's criteria contained in Treasury Circular No. 1075, as revised, requires a longstanding relationship with the Agency in addition to the grant recipient receiving financial

assistance of at least $120,000 annually. Technical assistance grant recipients clearly cannot meet these requirements. Also, EPA had concluded that the advance method of payment is more administratively cumbersome than reimbursement. This method of payment was considered not be be suitable for the Technical Assistance Grant Program.

All costs related to the Technical Assistance Grant Program must be determined to be necessary, reasonable, allowable, and allocable to the project. The recipient, as set forth at § 35.4080 of this regulation, may submit quarterly requests for any reimbursements. Costs incurred over $500 may be submitted monthly. Normally, the Agency will reimburse the recipient within 10 to 20 days of receipt and approval of the eligible costs incurred. Recipients therefore will not need to pay any costs out-of-pocket. States administering the Technical Assistance Grant Program should adhere to this timetable. See § 35.4080 of this regulation.

P. Subagreement Review

Although the choice of a technical advisor is within the province of the recipient, the procedures used in procuring the services of a technical advisor must be consistent with 40 CFR Part 33. Since the majority of grant recipients will not be familiar with EPA procurement regulations, EPA believes that many problems of noncompliance can be avoided by EPA reviewing the content of the subagreements before they are awarded. Therefore, to ensure compliance with EPA's procurement regulations, the recipient must inform EPA of any proposed subagreement with the technical advisor and must provide EPA the opportunity to review the subagreement before it is awarded. See § 35.4095 of this regulation. However, the recipient is responsible for compliance with the procurement regulations even if EPA has reviewed the subagreement.

Q. Grant and Procurement Process

The process for the review and evaluation of technical assistance grant applications and the procurement of a technical advisor must follow certain steps as described in this regulation and EPA's grant and procurement regulations (40 CFR Parts 30 and 33, respectively). The key steps of the process may be summarized as follows:

Step 1. Group submits a letter of intent.

Step 2. If site work is not scheduled to begin nor is underway, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA will formally notify the community if site work is scheduled to begin or is underway. The groups have 30 days to form a coalition and submit an application. If groups cannot form a single coalition, applicants have an additional 30 days if they want to file competing applications.

Step 3. Group or groups submits a grant application.

Step 4. EPA evaluates the applications and may make an award to a qualified applicant.

Step. 5. Recipient of the grant selects an approporiate procurement method, evaluates bids or proposals, and selects a technical advisor.

Step 6. Prior to selecting a technical advisor, EPA has the opportunity to review the group's subagreement.

Step 7. Group files quarterly request for reimbursement and progress reports and annual financial reports.

Step 8. Group prepares a draft and final report to EPA at the end of the technical assistance grant project.

The "Citizen's Guidance Manual for the Technical Assistance Grant Program" lays out in detail the grant and procurement process as well as the applicants and recipients' responsibilities. The Manual is designed to help citizens understand the process, complete the necessary forms correctly, and meet all their obligations to the Government.

III. Regulatory Analyses

A. Regulatory Impact Analysis

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). According to Executive Order No. 12291, "major" rules are regulations that are likely to result in:

(1) An annual adverse (cost) effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government, or geographical regions; or

(3) Significant adverse effects on the competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Technical Assistance Grant Program described here, which involves grants of up to $50,000 at sites listed on the NPL or proposed for listing where site work has begun, is a "non-major" rule. It would have no significant annual adverse effect on the economy of $100 million or more; or a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

There are approximately 951 sites currently on the NPL and if each site were awarded a maximum grant of $50,000, this would amount to less than $50 million. Also, EPA anticipates awarding approximately 50 technical assistance grants in 1988, the first year of the program and these would not amount to more than $2.5 million. Therefore, it would not have the requisite annual financial effect on the economy. This rule was submitted to the Office of Management and Budget for review as required by Executive Order No. 12291.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that Agencies evaluate the effects of a proposed rule for three types of small entities:

(1) Small businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, nondominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 5,000 people).

EPA has consistently considered the interests of small non-profit entities in designing the Technical Assistance Grant Program. EPA was careful not to impose additional reporting requirements on the public and to stay within the reporting requirement quota for grants and procurements. In addition, section 117(e) only applies to small non-profit organizations. There is even a limited number of small non-profit organizations involved in this program since this rule affects only those non-profit organizations located near the approximately 951 Superfund sites.

Moreover, EPA has undertaken several activities to help small organizations. EPA specifically developed the "Citizens' Guidance Manual for the Technical Assistance Grant Program" in order to assist small organizations through the grant and procurement process. The Agency has sought to increase the amount of small purchase orders to simplify the procurement process. EPA has deliberately written the regulations to encourage small entities to apply. And, for some applicants the Agency may waive the matching funds requirement.

Since today's rule is not expected to have a significant impact on small non-

profit entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980, the reporting and recordkeeping provisions of today's IFR have been submitted to the Office of Management and Budget (OMB), approved, and have been assigned OMB control numbers 2030-0020 and 2050-0083, for those information collection activities involving the general grant application process and for all other information collection activities associated with this rule.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." When EPA promulgates the Final Rule, EPA will respond to comments by OMB or the public regarding the information collection provisions and recordkeeping requirements of the rule.

IV. Supporting Information

List of Subjects in 40 CFR Part 35

Grant programs, Matching funds, Public involvement, Reporting and recordkeeping requirements, Hazardous wastes, Superfund.

Dated: March 18, 1988.

Lee M. Thomas,

Administrator.

Accordingly, the Administrator amends 40 CFR Part 35 by adding a new Subpart M to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart M—Grants for Technical Assistance

Subpart M—Grants for Technical Assistance

Authority. 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580.

§ 35.4000 Authority.

This regulation is issued under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

§ 35.4005 Purpose.

This regulation codifies policies and procedures for technical assistance grants awarded by EPA to groups of individuals. This regulation establishes the procedures for accepting and evaluating applications, and for awarding and managing technical assistance grants. These provisions supplement the EPA general assistance regulations and procedures at 40 CFR Part 30 and are applicable to all applicants/recipients of technical assistance grants.

§ 35.4010 Definitions.

As used in this regulation, the following words and terms shall have the meaning set forth below:

"Affected" means subject to an actual or potential health, economic or environmental threat arising from a release or a threatened release at a facility listed on the National Priorities List (NPL) or proposed for listing under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) where a response action under CERCLA has begun. Examples of "affected" parties include individuals who live in areas adjacent to NPL facilities, who depend on water sources endangered by releases of hazardous substances at the facility, or whose economic interests are directly threatened or harmed.

"Applicant" means any group of individuals that files an appplication for a technical assistance grant.

"Application" means a completed formal written request for a technical assistance grant that is submitted to the Agency on EPA Form 5700-33—State and Local Nonconstruction Program, or to a State on its appropriate form.

"Award" means the technical assistance grant agreement signed by both EPA and the recipient.

"Award Official" means the official delegated the authority to sign grant agreements.

"Budget" means the financial plan for the spending of all Federal and matching funds (including in-kind contributions) for a technical assistance grant project as proposed by the applicant, and negotiated with and approved by the Award Official.

"Budget Period" means the length of time specified in a grant agreement during which the recipient may spend or obligate Federal funds. The budget period may not exceed 3 years. A technical assistance grant project period may be comprised of several budget periods.

"Cash Contribution" means actual non-Federal dollars, or Federal dollars if expressly authorized by statute to do so, that a recipient spends for goods and services and real or personal property used to satisfy the matching funds requirement.

"Contractor" means any party (i.e., technical advisor) to whom a recipient awards a subagreement.

"EPA" means the Environmental Protection Agency. Where a State administers the Technical Assistance Grant Program, the term "EPA" may mean a State agency.

"Federal Facility" means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

"Grant Agreement" means the legal document that transfers money, or anything of value, to a recipient to accomplish the purpose of the technical assistance grant project. It specifies budget and project periods, the Federal share of eligible project costs, a description of the work to be accomplished, and any special conditions.

"In-Kind Contribution" means the value of a non-cash contribution used to meet a recipient's matching funds requirement in accordance with 40 CFR 30.307(b). An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to and directly benefiting the EPA-funded project.

"Matching Funds" means the portion of allowable project costs that a recipient contributes toward completing the technical assistance grant project using non-Federal funds or Federal funds if expressly authorized by statute. The match may include in-kind as well as cash contributions.

"Operable Unit" means a response action taken as one part of an overall site response. A number of operable units may occur in the course of a site response.

"Potentially Responsible Party" (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters, or generators) potentially responsible under sections 106 or 107 of CERCLA for the contamination problems at a Superfund site.

"Recipient" means any group of individuals that has been awarded a technical assistance grant.

"Recipient's Project Manager" means the person legally authorized to obligate the organization to the terms and conditions of EPA's regulations and the grant agreement, and designated by the recipient to serve as its principal contact with EPA.

"Response Action" means all activities undertaken to address the problems created by hazardous substances at a National Priorities List site.

"Start of Response Action" means the point in time when there is a guarantee or set-aside of funding either by EPA, other Federal agencies, States, or PRPs in order to begin response activities at a site. The document which reflects the set-aside of, or formally guarantees, funding during the coming fiscal year, is EPA's annual Superfund Comprehensive Accomplishments Plan (SCAP).

"Subagreement" means a written agreement between the technical assistance grant recipient and another party (a contractor other than a public agency) for services or supplies necessary to complete the technical assistance grant project. Subagreements include contracts and subcontracts for personal and professional services or supplies necessary to complete the technical assistance grant project, and agreements with consultants, and purchase orders.

§ 35.4015 Administration of the Program.

(a) Upon publication of this regulation, the Agency will begin accepting applications for and awarding technical assistance grants in consultation with the States.

(b) The Technical Assistance Grant Program will be available at an NPL site where a State response action is scheduled to begin or is underway and a CERCLA-funded cooperative or other written agreement exists between the Agency and the State.

(c) States wishing to administer the Technical Assistance Grant Program must inform the appropriate EPA Regional administrator. If a State elects to administer the program, it must do so in conformity with this regulation. Where States administer the program, EPA will have an oversight role.

(d) A State that chooses to administer the Technical Assistance Grant Program will receive technical assistance funds plus administrative costs from the Agency under a cooperative agreement. A State will receive $10,000 for administrative costs for the first technical assistance grant. For each subsequent technical assistance grant, the State will receive an amount equal to 8 percent of the technical assistance grant. Using the criteria established under this regulation, the State may select a qualified recipient and provide assistance in either of two ways:

(1) A State will pass through technical assistance funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 30.4080 of this regulation. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with 40 CFR Parts 30 and 33; or

(2) If a recipient group agrees, a State will use technical assistance grant funds to obtain the services of a technical advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a technical advisor, and managing the technical advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical assistance contracts, submitting financial and progress reports, and for disbursing all technical assistance grant funds in compliance with applicable EPA regulations and requirements.

§ 35.4020 Responsibility requirements.

(a) An applicant must meet the minimum administrative and management capability requirements set forth at 40 CFR 30.301. Thus, each applicant must demonstrate that it has established reliable procedures or has plans for establishing reliable procedures for recordkeeping and financial accountability related to the management of the technical assistance grant. These procedures must be in effect before the recipient incurs any costs. If EPA concludes that the applicant is not capable of meeting the responsibility requirements, the application will be rejected.

(b) Each recipient of a technical assistance grant must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof that the group has been incorporated by the State.

§ 35.4025 Eligible applicants.

Eligible applicants, except as provided in § 35.4030, are any group of individuals that may be affected by a release or a threatened release at any facility that (a) is listed on the National Priorities List (NPL) under the National Contingency Plan (NCP) is proposed for listing and a response action has begun.

§ 35.4030 Ineligible applicants.

(a) Groups and organizations which are ineligible to receive or to be represented in groups receiving technical assistance grants are:

(1) Potentially responsible parties (PRPs);

(2) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site;

(3) Academic institutions;

(4) Political subdivisions (e.g., townships and municipalities); and

(5) Groups established and/or sustained by governmental entities (including emergency planning committees and some citizen advisory groups).

(b) This section shall not preclude any individual affected by a Superfund site from participating in a recipient group in his or her capacity as an individual.

§ 35.4035 Evaluation criteria.

EPA will award a technical assistance grant only after it has determined that all eligibility and responsibility requirements listed in §§ 35.4020, 35.4025, and 35.4030 are met, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant will be required to provide information on how it meets the eligibility criteria in the grant application. If the Agency is administering the technical assistance grant program, the "Applicant Qualifications" section is Part IV of EPA Form 5700.33, "State and Local Nonconstruction Programs." The following factors will be evaluated and weighted as indicated:

(a) The presence of an actual or potential health threat posed to group members by the site. This criterion can be met by establishing a demonstrable

threat to members' health or a reasonable belief that the site poses a substantial threat to their health. (30 points);

(b) The applicant best represents groups and individuals affected by the site (20 points);

(c) The identification of how the group plans to use the services of a technical advisor throughout the Superfund response action (20 points);

(d) The demonstrated intention and ability of the applicant to inform others in the community of the information provided by the technical advisor (20 points); and

(e) The presence of an actual or potential economic threat or threat of an impaired use or enjoyment of the environment to group members that is caused by the site. This criterion can be met by establishing a demonstrable economic or environmental threat to group members or a reasonable belief that the site poses a substantial economic or environmental threat. (10 points).

§ 35.4040 Notification process.

(a) Groups wishing to apply for a technical assistance grant shall first submit a letter of intent to EPA. EPA will respond in writing to a letter of intent.

(b) Upon receipt of the first letter of intent, EPA will undertake certain activities depending on the schedule for work at the site:

(1) If commencement of the remedial investigation or a removal action is not underway or scheduled to begin, EPA will advise the group in writing that grant applications for the site are not yet being accepted. EPA may informally notify other interested groups that it has received a letter of intent; or

(2) If a response action is already underway or scheduled to begin, EPA will conduct one or more of the following activities—mailings, meetings, and public notices—to provide formal notice to other interested parties that a grant for the site soon may be awarded. These formal notification activities will generally be conducted far enough in advance of the start of the response action to allow time for groups to consolidate, apply for and receive a grant award, and procure a technical advisor before work commences at the site.

(c) Other potential applicants will have 30 days to contact the original applicant to form a coalition. If the community groups are unable to form a coalition, they must notify EPA within the 30 days. EPA will then accept separate applications from all interested groups for an additional 30-day period. EPA may consider written requests for extensions of this time. If there is a qualified applicant, a grant will be awarded from among the competing applications based on the evaluation criteria described in § 35.4035 of this regulation. The schedule for response activities at a site will not be affected by the technical assistance grant application process.

(d) A formal grant application from a group which has not first submitted a letter of intent to EPA will be considered a letter of intent for the purposes of this subsection.

§ 35.4045 Submission of application.

(a) After an applicant submits a letter of intent, it must submit to the Agency its request for a technical assistance grant on EPA Form 5700–33, "State and Local Nonconstruction Programs." Each applicant must submit the original and two copies of the application to the Agency. At least one application must have the original signature (i.e., not a photocopy of the signature) of the Recipient's Project Manager. If the State is administering the program, an applicant must submit a request for a technical assistance grant to a State on the appropriate State form;

(b) An applicant must submit a proposed budget clearly showing the proposed expenditure of funds, how it will provide the cash and/or in-kind contributions to meet the "match" requirement, and how the funds and other resources, including the "match," will be used to complete the technical assistance grant project;

(c) An applicant must submit to the Agency or the State on the appropriate form a short narrative justification to show compliance with the evaluation criteria in § 35.4035. Instructions for filing an application with the Agency are contained in the application kit and explained in EPA's "Citizens' Guidance Manual for the Technical Assistance Grant Program." Application kits are available from EPA Regional Offices upon request.

Instructions for filing an application with a State will be provided by the State.

§ 35.4050 Timing of award.

An award of a technical assistance grant will be made no earlier than the start of the response action. Grants to qualified applicants could be delayed depending upon the availability of funds for the Superfund program.

§ 35.4055 Ineligible activities.

(a) The following activities are ineligible for assistance under this program:

(1) Litigation or underwriting legal actions such as paying for attorney fees or paying for the time of the technical advisor to assist an attorney in preparing a legal action or preparing for and serving as an expert witness at any legal proceeding;

(2) Political activity and lobbying in accordance with 40 CFR 30.601 which incorporates OMB Circular A–122;

(3) Other activities inconsistent with the cost principles stated in OMB Circular A–122, "Cost Principles for Non-Profit Organizations";

(4) Tuition or other expenses for recipient group members or technical advisors to attend training, seminars or courses;

(5) Any activities or expenditures for recipient group members' travel;

(6) Generation of new primary data such as well drilling and testing, including split sampling; and

(7) Reopening final Agency decisions or conducting disputes with the Agency.

§ 35.4060 Eligible activities.

Technical assistance grants may be used to obtain technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or a significant removal action at a facility that is (a) listed on the NPL or (b) proposed for listing and at which a response action has begun. Technical assistance grants shall be used to fund activities that will contribute to the public's ability to participate in the decisionmaking process by improving the public's understanding of overall conditions and activities.

§ 30.4065 Technical advisor's qualifications.

(a) A technical advisor must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues;

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering); and

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical advisor should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems;

(2) Experience in making technical presentations;

(3) Demonstrated writing skills; and

(4) Previous experience working with citizens' or community groups or other groups of individuals.

§ 35.4070 Sanctions.

If EPA determines that the recipient has failed to comply with any terms of the grant agreement, EPA will initiate an appropriate measure as set forth at 40 CFR Part 30, Subpart I.

§ 35.4075 Pre-award costs.

(a) Grant funds may not be used to pay costs incurred prior to award of the technical assistance grant, except as provided in paragraph (b) of this section.

(b) Necessary and reasonable costs of incorporation, if incurred for the sole purpose of complying with this regulation, will be eligible pre-award costs and may be charged to the technical assistance grant or count toward the matching funds requirement described in § 35.4085(a)(2).

§ 35.4080 Method of payment.

All grant recipients shall be reimbursed for grant-related eligible, allocable, allowable, necessary, and reasonable costs up to the amount of the technical assistance grant which have been incurred and which the recipients are currently and legally obligated to pay. Recipients may submit quarterly requests for reimbursement to the Agency on SF 270—Request for Advance or Reimbursement, or the appropriate State form if the State is administering the technical assistance grant program. Costs incurred greater than $500 may be submitted monthly.

§ 35.4085 Grant limitations.

Technical assistance grants will be awarded subject to the following limitations:

(a) The recipient must contribute 35 percent of the total costs of the technical assistance grant project, except as provided in § 35.4090(b) of this regulation.

(1) Absent specific statutory authority, no Federal funds may be included in the matching share.

(2) To meet the matching funds requirement, the recipient may use cash and/or in-kind contributions.

(b) The technical assistance grant award will not exceed $50,000 for a single grant recipient, except as provided in § 35.4090(a) of this regulation.

(c) Not more than one technical assistance grant may be awarded for any eligible site.

(d) Unless a waiver is granted, the technical assistance grant award of $50,000 will cover the entire Superfund cleanup process.

(e) Costs of administering the technical assistance grant are allowable to the extent that they do not exceed 15 percent of the total project costs.

§ 35.4090 Waivers.

(a) Waivers of the $50,000 limit may be granted only in the case of a single application covering multiple sites. In order to reduce the administrative burden to a recipient, the limitation that a single recipient cannot receive more than $50,000 may be waived by the Agency where there are several eligible sites in close geographic proximity to each other [e.g., 3 sites × $50,000 = grant of $150,000].

(b) Waivers of the matching funds requirement will be granted only in exceptional cases. At any point in the process, the Agency may approve a waiver when it is established that the grant recipient cannot meet the matching funds requirement. The Agency may waive all or part of the recipient's matching funds requirement only after a finding by the Agency that:

(1) There is a need for a waiver because providing the "match" would constitute an unusual financial hardship,

(2) A good faith effort at raising the "match," including obtaining in-kind services, has failed, and

(3) The waiver is necessary to facilitate public participation in the selection of remedial action at the facility.

(c) Where a recipient who has obtained a grant subsequently obtains a waiver of the matching funds requirement, the grant agreement must be amended. [See 40 CFR Part 30, Subpart G.]

(d) No waivers will be granted by the Agency once the Record of Decision (ROD) has been issued at the last operable unit at the site.

§ 35.4095 Subagreement review.

Each applicant must inform EPA of any proposed subagreement between the recipient and the technical advisor and must provide EPA the opportunity to review the subagreement before it is awarded.

§ 35.4100 Disputes.

(a) If the Agency administers the Technical Assistance Grant Program, the Agency shall review disputes between Agency officials and the applicant or recipient in accordance with its dispute resolution procedures set forth at 40 CFR Part 30, Subpart L.

(b) If the State administers the Technical Assistance Grant Program, any applicant or recipient who has been adversely affected by a State's action or omission may request Agency review of such action or omission, but must first submit a petition for review to the State agency that made the initial decision. The State must provide, in writing, normally within 45 days of the date it receives the petition, the basis for its decision regarding the disputed action or omission. The final State decision must be labeled as such and, if adverse to the applicant or recipient, must include notice of the right to request Agency review of the State decision under this section. A State's failure to address the disputed action or omission in a timely fashion, or in writing, will not preclude Agency review.

(1) Requests for Agency review must include:

(i) A copy of any written State decision.

(ii) A statement of the amount in dispute.

(iii) A description of the issues involved, and

(iv) A concise statement of the objections to the State decision.

(2) The request must be filed by registered mail, return receipt requested, within 30 days of the date of the State decision or within a reasonable time if the State fails to respond in writing to the request for review.

(c) The Agency shall determine whether the State's review is comparable to a dispute decision official's (DDO) review pursuant to 40 CFR Part 30, Subpart L. If the State's review is comparable, the Regional Administrator will conduct the Agency's review of the State's decision. If the State's review is not comparable, an Agency DDO will review the State's decision and issue a written decision. If the Agency DDO issues a decision, the applicant or recipient may request a Regional Administrator's review of the decision. The applicant or recipient may request an EPA Assistant Administrator review of a Regional Administrator's decision pursuant to Subpart L.

§ 35.4105 Audits.

(a) *Records and audit—recipient.* (1) Each recipient shall keep and preserve full written financial records accurately disclosing the amount and the disposition of any funds, whether in cash or in-kind, applied to the technical assistance grant project, and shall comply with the terms and conditions of the grant agreement.

(2) Such records shall be retained for three years from the date of the final Financial Status Report, or until any audit, litigation, cost-recovery, and/or any disputes initiated before the end of the three-year retention period are settled, whichever is longer. A recipient

must obtain EPA's prior written approval to destroy records after the record retention period.

(b) *Records and audit—contractor(s).* (1) The recipient shall require its contractor(s) to keep and preserve detailed records in connection with the subagreement, reflecting acquisitions, work progress, reports, expenditures, and commitments and indicating their relationship to established costs and schedules.

(2) The recipient shall require its contractor(s) to keep such full written financial records to adequately establish compliance with the terms and conditions of the subagreement. Such records shall be retained for three years from closeout of the subagreement, unless audit, litigation, cost-recovery, and/or any disputes are initiated before the end of the three-year retention period. The recipient shall require its contractor(s) to obtain its prior written approval before the contractor(s) destroys any records after the record retention period. The recipient shall not give such approval without first obtaining EPA's approval.

(Approved by the Office of Management and Budget under control numbers 2030–0020 and 2050 0083).

§ 35.4110 Reports.

(a) *Progress reports.* Each recipient shall submit quarterly progress reports to EPA for the technical assistance grant project 45 days after the end of each calendar quarter. Progress reports shall fully describe in chart or narrative format the progress achieved in relationship to the approved schedule, budget, and the technical assistance grant project milestones. Special problems encountered must be explained.

(b) *Financial status report.* Each recipient shall submit to EPA a financial status report annually, within 90 days after the anniversary date of the start of the technical assistance grant project, and within 90 days after the end of the grant budget period and project. A recipient shall submit to the Agency a financial status report on SF–269 or on the appropriate State form if the State is administering the Technical Assistance Grant Program.

(c) *Final report.* Each recipient shall submit to EPA a draft of the final report for review no later than 90 days prior to the end of the technical assistance grant project and a final report within 90 days of the end of the project. The report shall document technical assistance grant project activities over the entire period of grant support and shall describe the recipient's achievements with respect to stated technical assistance grant project purposes and objectives.

(Approved by the Office of Management and Budget under control numbers 2030–0020 and 2050–0083)

§ 35.4115 Availability of information.)

Each recipient shall ensure that all final written products developed by a contractor for the recipient under its grant are disseminated by providing copies of such documents to EPA for the local Superfund information repository.

§ 35.4120 Budget period.

The budget period may not exceed three years. A technical assistance grant project period may be comprised of more than one three-year budget period.

§ 35.4125 Federal facilities.

EPA will determine the eligibility of any group of individuals who may be affected by a release or a threatened release at a Federal facility for a technical assistance grant under this regulation.

§ 35.4130 Conflict of interest and disclosure requirements.

(a) The recipient shall require each prospective contractor on any subagreement to provide, with its bid or proposal:

(1) Information on its financial and business relationship with all PRPs at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, and current clients or attorneys and agents (this disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties);

(2) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(3) A statement that it shall disclose immediately any such information discovered after submission of its bid or proposal or after award. The recipient shall evaluate such information and shall exclude any prospective contractor if the recipient determines the prospective contractor's conflict of interest is significant and cannot be avoided or otherwise resolved.

(b) Contractors and subcontractors may not be technical advisors to recipient groups at the same NPL site for which they are doing work for the Federal or State government or any other entity.

[FR Doc. 88–6501 Filed 3–23–88; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Solid Waste and Emergency Response

40 CFR Ch. I

[FRL 3307-1]

Technical Assistance Grant Program Administrative Services Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of rulemaking; request for comments.

SUMMARY: Elsewhere in today's **Federal Register**, the Environmental Protection Agency (EPA) is publishing the Interim Final Rule (IFR) for the Superfund Technical Assistance Grant Program. This Advance Notice of Rulemaking (ANRM) solicits comments regarding a proposal to provide technical assistance grant applicants and recipients with the services of an Administrative Services Contractor (ASC). These services could include both assistance in preparing grant applications and the procurement of technical assistance, and contract management. To implement the ASC, EPA would acquire contractors on a State, Regional, or National basis to provide services to grant recipients in lieu of cash. The ASC concept is based on EPA's desire to make the Technical Assistance Grant Program easier for groups to use and for EPA to administer.

DATE: Written comments must be received on or before April 25, 1988.

ADDRESSES: Comments: Written comments must be submitted to: Superfund Docket Clerk, Office of Emergency and Remedial Response (WH-548D), Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20450. Comments on today's ANRM must identify the document as follows: "Docket CERCLA 117(e), Technical Assistance Grant Program Administrative Services Contractor." Copies of materials relevant to this ANRM are contained in the Superfund docket located in the Lower Garage (Room LG-100) at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays, by appointment only. The docket phone number in Washington, DC is (202) 382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, WH-548E, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at (202) 382-2460 or the RCRA/Superfund Hotline from 9:00 a.m. to 4:30 p.m., Monday-Friday, toll free at 1-(800)-424-9436 or in Washington, DC at 382-3000.

SUPPLEMENTARY INFORMATION: Today's ANRM hs the following sections:

I. Introduction

Section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting technical material related to cleanups at Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these technical assistance grants before processing any grant applications. Executive Order No. 12580 delegated to EPA the authority to develop the Interim Final Rule (IFR) published elsewhere in today's **Federal Register** and award these technical assistance grants.

This ANRM is being published today to solicit comments on EPA providing technical assistance grant applicants and recipients with the services of an ASC. These comments will be considered in developing the Final Rule for the Technical Assistance Grant Program and in determining whether to include the ASC approach in that Final Rule.

II. Discussion of the ASC Concept

EPA recognizes that technical assistance grant applicants and recipients may have little experience in applying for Federal grants or meeting the various recordkeeping, accounting, and contracting, and other requirements established in the EPA grant and procurement under assistance agreement regulations codified at 40 CFR Parts 30 and 33. The IFR published elsewhere in today's **Federal Register** ensures, as it must, that technical assistance grants will go only to citizens' groups that can and will comply with those regulations. However, EPA recognizes that technical assistance grant recipients may have to devote some of their limited resources to managing the grants in compliance with EPA regulations, rather than focusing on using the technical assistance grant for interpreting site-related documents. It also recognizes that there may be other citizens' groups with the potential ability to use technical assistance grants very productively, but who are precluded from receiving technical assistance grants by their inability to meet EPA's responsibility requirements for administrative and financial management of the grant.

An ASC could benefit such citizens' groups by offering assistance to grant applicants in completing all of the forms, by procuring technical assistance for grant recipients, and by assuming responsibility for managing and disbursing all Federal funds in compliance with EPA regulations. This would leave technical assistance grant recipients free to devote their time to making the most effective use of the technical assistance itself.

EPA also recognizes that administering the Technical Assistance Grant Program may place heavy demands on the resources of the lead agency (i.e., EPA or the State agency administering the technical assistance grant program). For every technical assistance grant, the lead agency must screen applicants, select a grant recipient, negotiate a grant agreement, and monitor the grant recipient's management of the technical assistance grant for compliance with the grant agreement itself and with EPA's grant and procurement under assistance agreement regulations. An ASC that contractually assumed responsibility for ensuring that all Federal funds were used in compliance with the technical assistance grant agreement and with applicable EPA regulations could reduce the lead agency's workload in fulfilling its oversight responsibilities.

In addition, some technical assistance grant applicants may be unfamiliar with the EPA grant process. If such citizens' groups have questions and difficulties while preparing their applications, they may ultimately look to the lead agency for information, advice, or assistance. An ASC whose services were available to grant applicants could reduce the lead agency's workload, both directly, by helping applicants who would otherwise seek help from the lead agency, and indirectly, by facilitating the submission of more accurate and informative applications.

EPA, therefore, is considering establishing one or more ASC(s) either on a State, Regional, or National basis, to provide services to grant applicants and recipients. The contractor(s) would procure such technical services and disburse funds as needed to pay for

them. The ASC would also assume full responsibility for ensuring (1) that the services provided in the technical assistance grant award are delivered in a timely and effective manner, and (2) that all funds are managed and disbursed in full compliance with appropriate EPA regulations. The ASC would be subject to audit and liable for any costs disallowed as a result of an audit. The ASC would also be responsible for ensuring that use of the funds was consistent with each site budget and scope of work.

The ASC would not, however, play any role in deciding which citizens' group receives the technical assistance. Nor would it participate in determining the amount of technical assistance a grant recipient would receive. In addition, the grant recipient, and not the ASC, must provide the "match" of 35 percent.

After a technical assistance grant is awarded to a group of individuals, the grant recipient could consult with the ASC and help it to develop a request for proposal (RFP) for use in procuring a technical advisor. The grant recipient could also assist the ASC in reviewing bids received from prospective technical advisors. The grant recipient could then recommend a choice of technical advisor, but could not make the formal selection of the advisor. As the contractor for the project, the ASC would have the ultimate responsibility for selecting and contracting with all subcontractors, including the technical advisor, in accordance with EPA procurement regulations.

Thus, the community group would receive the full benefits of the technical assistance, while the ASC would be responsible for manageing and disbursing EPA funds in compliance with appropriate regulations and recordkeeping requirements. To ensure this, EPA's contract with the ASC would specify that the ASC was to provide the recipient group with the full amount of technical assistance specified in the grant agreement. Thus, if a technical assistance grant were awarded for $20,000, the grant recipient could receive $20,000 worth of technical assistance services, while EPA itself would fund, through the contract with the ASC, the costs of the ASC's services.

The following depicts one model for how this process could flow:

1. ASC is selected.
2. ASC provides information and assistance to citizens' groups applying for technical assistance grants.
3. Citizens' groups submit applications to lead agency.
4. Lead agency awards technical assistance grant to citizen's group.
5. Grant recipient assists ASC in developing the scope of work for the technical advisor.
6. ASC solicits subcontractors.
7. Grant recipient recommends to the ASC the selection of the subcontractor.
8. ASC selects subcontractor, negotiates and manages subcontract which specifies that the technical advisor will provide information and meet with the recipient as appropriate, and receives information concerning site from technical advisor.
9. Grant recipient receives reports directly from the technical advisor, consults with ASC, and recommends contract changes as appropriate.
10. ASC makes contract changes, as needed, and monitors contract to ensure technical advisor compliance;
11. ASC keeps records and reports to the lead agency.

III. Benefits of the ASC

The most obvious benefit of the ASC concept is that it permits citizens' groups to receive technical assistance without the administrative burden of managing and disbursing grant funds in compliance with EPA regulations. The ASC can benefit citizens' groups by providing a wide range of services and assistance which would not otherwise be available. An ASC can offer information and assistance to citizens' groups interested in applying for technical assistance grants. After the technical assistance grant has been awarded, the ASC, with assistance from the grant recipient, can identify precisely what services are needed at a site, and what contractors are capable of providing those services. In addition, the ASC can develop requests for proposal to provide those services. The technical assistance grant recipient can then review the proposals and recommend a technical advisor. The ASC will select and contract with the advisor, oversee the technical advisor's performance to ensure compliance with the terms of the contrct, manage and disburse funds to pay for the goods and services received, and prepare and ratain financial reports and records. Finally, it would be the ASC, rather than the citizens' groups, who would be accountable for compliance with applicable Federal procurement, and financial management requirements.

Conversely, if there is no ASC, technical assistance grant applicants who need assistance will have to rely on the lead agency for help. After the technical assistance grant is awarded, grant recipients will be responsible for identifying what technical services are needed, obtaining information regarding which contractors are available to provide those services, and developing requests for proposals. The grant recipient will be responsible for soliciting and evaluating responses to its request for proposal, selecting and negotiating a contract with the technical advisor, and monitoring the technical advisor's performance to ensure compliance with the contract. In addition, the grant recipient will be responsible for sound financial management involving the disbursement of funds and preparing financial reports. Finally, the grant recipient will be responsible for complying with all applicable Federal regulations and requirements in performing these tasks.

IV. Requests for Comments

Today, EPA solicits comments on the ASC concept. It frankly notes that this plan involves a number of trade-offs. On the one hand, grant recipients are freed from responsibility for securing the technical advisor and managing and disbursing grant funds in compliance with EPA grant and procurement under assistance agreement regulations and the recordkeeping and management responsibilities those regulations entail. On the other hand, although grant recipients can recommend the selection of a technical advisor, contract law requires that, as the contractor, the ASC must select subcontractors, including the technical advisor. EPA is interested in determining whether citizens' groups would be willing to exchange ultimate control over the selection of a technical advisor for the range of services and expertise an ASC can provide.

In addition, the ASC would oversee delivery of all technical assistance services and grant recipients would have an advisory role in managing the technical assistance grant. This might limit some opportunities grant recipients would otherwise have to contribute in-kind services to meet the 35 percent matching funds requirement. EPA invites comments on whether this would significantly affect a citizens' group's ability to meet the "match" and, if so, how EPA could treat the "match" requirement if it adopts some form of the ASC proposal.

EPA notes that the ASC concept is feasible only if it provides a cost-effective method of both assisting grant recipients and reducing the administrative burdens of the lead agency. Thus, a sufficient number of grant recipients would have to use the ASC to reduce EPA's administrative burden as well as to justify the expense in establishing such a system. EPA,

therefore, requests comments on whether citizens' groups would utilize the services of an ASC if they were available. In addition, EPA solicits comments on whether grant recipients should be required to utilize the services of the ASC as a condition of receiving their technical assistance grants.

EPA also solicits comments on whether the ASC should provide assistance only to those selected as grant recipients or should instead be available to assist all applicants. If it should assist applicants, EPA requests comments on how far the ASC should go beyond simply providing information and assistance as requested. EPA notes that any role that puts the ASC in the position of appearing to provide more assistance to one applicant than it provides to a competing applicant may be inappropriate. Such an arrangement could raise questions of favoritism and could make it difficult for the ASC to work productively with a grant recipient that believed the ASC had provided undue help to a competing applicant.

EPA also desires public comments on whether an ASC should be chosen on a State, Regional, or National basis. A single National contract may be easier and quicker to award than a series of Regional ones: typically, a Regional contract is easier and quicker to award than passing money to the States who, in turn, contract for such services. Citizens' groups may, however, perceive a State contractor to be more readily available and responsive than a National contractor. A way to incorporate the advantages of the two approaches may be to have a more distant contractor establish a toll-free number and to be available for at least one site meeting with each grant recipient; should it prove necessary, the ASC also could be available to meet once with an applicant group.

Finally, EPA desires public comment on whether EPA or the State, if they are administering the Technical Assistance Grant Program for a site, should be responsible for providing the ASC for that site. This would lead to the establishment of separate State and EPA ASC's in some States. EPA requests comments as to whether such an arrangement would be cost-effective or whether it would be confusing to the public.

Dated: March 18, 1988.

Lee M. Thomas,

Administrator.

[FR Doc. 88-6502 Filed 3-23-88; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Solid Waste and Emergency Response

[FRL-3354-7]

Financial Assistance Program Eligible for Review Under 40 CFR Part 29; Superfund Site Cleanups

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability and Review.

SUMMARY: Pursuant to section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e), the Environmental Protection Agency (EPA or the Agency) is announcing the availability of a new financial assistance program, the "Technical Assistance Grant Program" (Catalog of Federal Domestic Assistance Number 66.807). This program will make technical assistance grants (TAGs) of up to $50,000 available to groups of individuals to obtain assistance in interpreting information related to cleanups at Superfund sites. Funds are available starting in fiscal year (FY) 1988 for technical assistance grants to citizens' groups.

DATE: States choosing to include this program in their intergovernmental review process must notify EPA on or before April 25, 1988.

FOR FURTHER INFORMATION CONTACT: Daphne D. Gemmill, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2460.

SUPPLEMENTARY INFORMATION: Section 117(e) of CERCLA authorizes the President to make available technical assistance grants of up to $50,000 to groups of individuals to obtain assistance in interpreting information related to cleanups at Superfund sites. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order (E.O.) No. 12580 delegated to EPA the authority to implement section 117(e) in consultation with the Attorney General.

Under the authority of section 117(e) of CERCLA, EPA will award grants to any group of individuals that may be affected by a release or a threatened release at any facility that (a) is listed on the National Priorities List (NPL) under the National Contingency Plan (NCP) or (b) is proposed for listing and a response action has begun.

The Technical Assistance Grant Program is eligible for intergovernmental review under E.O. No. 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, as amended; section 401 of the Intergovernmental Cooperation Act of 1968, as amended; and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended. States must notify the following office in writing within 30 days of this publication whether their State's official E.O. No. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applicants for technical assistance grants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to determine if the Technical Assistance Grant Program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications that include activities to be implemented within a metropolitan area must be sent for review to the areawide/Regional/local planning agency designated to perform metropolitan or Regional planning for the area.

SPOCs and other reviewers should send their comments on an application to the appropriate EPA Regional Office no later than sixty days after receiving the technical assistance grant application or other material required for review.

Applications for technical assistance grants will undergo administrative review for adequacy, content, completeness, and other criteria set by EPA. The EPA Regional Offices will have both award and approval authority.

Dated: March 21, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-6503 Filed 3-23-88; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Thursday
March 24, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Transponder with Automatic Altitude Reporting Capability Requirement and Controlled Airspace Common Floor; Notice of Proposed Rulemaking; Extension of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

[Docket No. 25531; Notice No. 88-2]

Transponder with Automatic Altitude Reporting Capability Requirement and Controlled Airspace Common Floor

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period.

SUMMARY: On February 12, 1988, the FAA published Notice No. 88-2 which proposes to require that all aircraft be equipped with a transponder and automatic altitude reporting equipment (Mode C transponder) when operating in terminal airspace where air traffic control (ATC) radar service is provided, and when operating at and above 6,000 feet above the surface in controlled airspace, and proposes to establish a common floor for controlled airspace over the U.S. This notice announces an extension of the comment period of the NPRM (Notice No. 88-2) for an additional 45 days.

DATE: Comments must be received on or before May 12, 1988.

ADDRESSES: Mail comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGD-204) (Docket No. 25531), 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in these proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of these comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25531." The postcard will be date/time stamped and returned to the commenter. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

Docket No. 25531 published on February 12, 1988 (53 FR 4306) proposed to require a Mode C transponder on all aircraft operating within 40 miles of an airport for which terminal radar approach control service was established, and on all aircraft operating in controlled airspace at or above 6,000 feet above the surface or 12,500 feet mean sea level (MSL) whichever is lower. Additionally, Docket No. 25531 contained a proposal to replace the Continental Control Area with the U.S. Control Area and described this new area as the airspace beginning at or below the level established for the use of Mode C transponders over the U.S. which includes the 50 States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters.

The Experimental Aircraft Association (EAA) and the Aircraft Owners and Pilots Association have requested that the comment period be extended from 45 days to as long as 120 days to enable those persons impacted by the proposal to obtain knowledge of the proposal and formulate meaningful comments. The FAA has received similar requests from a number of other commentors, including members of Congress. The FAA is aware that many general aviation pilots and others associated with the aviation industry receive notification of proposed rulemaking actions only through user organizations. In addition, it is apparent from many of the comments already received that this rulemaking involves complex issues with a broad impact on the flying public. For the above reasons, I believe that an extension of the comment period is necessary in order to guarantee that all interested parties, including pilots and aircraft owners who receive notification of proposals primarily through user organizations, will have an opportunity to respond to the NPRM. Accordingly, I have decided to extend the comment period for this rulemaking. The Department of Transportation concurs with this decision.

EAA and various other commentors who have already responded to the notice have requested extension periods of up to 75 additional days. Due to the statutory requirement to issue a final rule by June 30, 1988, however, an extension of the original comment period beyond an additional 45 days is not feasible. A comment period of 90 days will be sufficient for the agency to receive informed and representative comments from the public and to reach a timely final rule action.

For the reasons stated, I am extending the comment period on Docket No. 25531 to May 12, 1988, to allow for a 90-day comment period instead of the original 45-day comment period.

Issued in Washington, DC, on March 21, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-6514 Filed 3-22-88; 11:04 am]

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Reader Aids

Federal Register

Vol. 53, No. 57

Thursday, March 24, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

6115-6552.....1
6553-6782.....2
6783-6964.....3
6965-7176.....4
7177-7324.....7
7325-7488.....8
7489-7722.....9
7723-7874.....10
7875-8140.....11
8141-8420.....14
8421-8610.....15
8611-8744.....16
8745-8858.....17
8859-9098.....18
9099-9280.....21
9281-9422.....22
9423-9594.....23
9595-9758.....24

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5774.....7323
5775.....7723
5776.....8863
5777.....9420
5778.....9425

Executive Orders:
12587 (Superseded by EO 12629).....7875
12607 (Amended by EO 12627).....6553
12627.....6553
12628.....7725
12629.....7875
12630.....8859
12631.....9421

Administrative Orders:
Presidential Determinations:
No. 88-11 of Mar. 7, 1988.....9423

5 CFR

595.....8141
630.....7325, 8301
831.....6555
1650.....8421

Proposed Rules:
339.....9121
890.....7763

7 CFR

1.....7177
2.....6783, 7877
272.....6556
273.....6556
301.....6783, 6965, 7877
354.....7489
401.....6559, 6561, 6965, 7878, 9099, 9100
413.....9102
420.....9103
421.....6563
422.....6115
424.....6564
428.....6565
438.....6565
440.....9104
448.....6566
452.....6567
455.....6115, 6568
719.....6119
907.....6968, 7328, 7879, 8865
908.....7328
910.....6969, 7490, 7879, 8422, 8866
917.....6128
925.....6572
927.....7880
946.....8142
948.....8145
959.....7329
982.....8423
984.....9595
985.....6129
989.....9427
1139.....6916
1240.....8147
1421.....6131, 8745
1610.....6969
1823.....7330
1900.....7330
1924.....8738
1940.....7330
1941.....8738
1942.....6784
1944.....7178, 7491
1951.....7330
1955.....7330
1962.....7330, 8738
1965.....7330, 7491, 8738
1980.....7330, 8148
2054.....9597
3015.....8034
3016.....8034

Proposed Rules:
51.....7531
52.....7532
252.....7188
401.....6652-6654
449.....6655
800.....8921
917.....8460, 9634
925.....9450
933.....7194
944.....9450
946.....7369
1007.....9635
1030.....8205
1032.....7210
1065.....9636
1106.....6158
1126.....7942
1210.....9637
1425.....7370
1772.....8219
1822.....9318
1823.....9318
1910.....9318
1924.....7532
1941.....9318
1942.....9318
1943.....9318
1944.....9318
1945.....9318
1951.....9318
1955.....9318
1965.....9318

8 CFR

212.....9281
241.....9281
242.....9281

245a.....9274
274a.....8611
287.....9281
292.....7727

9 CFR

51.....7881
97.....7492
317.....7493
318.....7493
319.....8425
381.....7493

Proposed Rules:

92.....6656, 6791, 8301
307.....8922
350.....8922
351.....8922
352.....8922
354.....8922
355.....8922
362.....8922
381.....8922

10 CFR

2.....9429
4.....6137
15.....6137
19.....6137
20.....6137
21.....6137
50.....6137, 8845, 9430
53.....6137
55.....6137
73.....6137
75.....6137
81.....6137
140.....6137
150.....6137
170.....6137
430.....8304
600.....8034

Proposed Rules:

Ch. 1.....7534
2.....6666
34.....8460
50.....6159, 7534, 8924
73.....7534
430.....7110

11 CFR

Proposed Rules:

102.....6916
106.....6916

12 CFR

4.....6573
21.....7881
29.....7885
30.....7885
34.....7885
310.....7339
545.....6792
561.....6792
563.....6792
563c.....6792
564.....8167
570.....6792
620.....7340
621.....7340
701.....9610
1101.....7340

Proposed Rules:

3.....8550
225.....8500
308.....9406
325.....8500

13 CFR

120.....7343
133.....9611
143.....8034

14 CFR

21.....6793, 7728, 8866
25.....8866
36.....6793, 7728
39.....6793, 6794, 7074, 7346–7348, 7729–7732, 8614, 8615, 8730, 8868–8870, 9284, 9431, 9432
71.....6140–6142, 6219, 6795, 6796, 6918, 7349–7352, 8172, 8173, 8301, 8616, 9285
73.....6796, 7352, 7353, 8173, 8175
95.....6573
97.....6592, 8872
121.....8726
150.....8722, 9726

Proposed Rules:

Ch. 1.....6830
25.....8742
27.....7479, 9190
29.....7479, 9190
39.....7371–7373, 7764, 7765, 8220, 8633, 8634, 8926–8928, 9322
61.....8368
63.....8368
65.....8368
71.....6160–36162, 6666, 6830, 6832, 7374–7377, 7468, 8635, 8929, 9124, 9323, 9758
73.....7377, 7378, 9124
91.....7096, 8930, 9758
107.....9094
121.....8368
133.....9190
135.....7096, 8368, 8930
241.....9553

15 CFR

4.....6972
18.....6797
24.....8034
370.....6143
372.....6143
399.....7733

Proposed Rules:

379.....8221

16 CFR

13.....9104, 9108
1016.....6593

Proposed Rules:

Ch. II.....6833
13.....6667, 9666

17 CFR

1.....7178, 7179
3.....8428
5.....7179
31.....7179
145.....8428
211.....7892
230.....7866

Proposed Rules:

31.....8932
230.....7870
400.....8598
402.....8598
403.....8598
404.....8598
450.....8598

18 CFR

154.....7495
157.....7503, 8176
284.....7893, 8439
380.....8176
389.....7354

Proposed Rules:

35.....9324
38.....9327
292.....9331
293.....9324
382.....9327

19 CFR

4.....6143, 9285, 9315
6.....9285
10.....9285
18.....9285
24.....9110, 9285
101.....8746
122.....9285
123.....9285
162.....9285

Proposed Rules:

6.....7766
146.....6996

21 CFR

5.....8617
60.....7298
81.....6983
172.....6595
176.....8618
178.....8440
193.....8873, 9433
349.....7076
369.....7076
524.....7504
561.....8873, 9433

Proposed Rules:

182.....8301
201.....8845
349.....6997
356.....8845
357.....7073
369.....8845

22 CFR

40.....9110, 9172
41.....9110, 9172
42.....9110, 9172
135.....8034
303.....8178
601.....9614

23 CFR

655.....8620

Proposed Rules:

659.....7943

24 CFR

44.....8034
85.....8034
111.....8034
115.....6964
200.....6600
201.....6922, 8874
203.....6922, 8626, 8874
204.....8874
205.....8874
207.....8874
213.....8874
215.....6600
220.....8874
221.....6600, 8874
231.....8874
232.....8874
234.....6922, 8874
235.....6600
236.....6600
240.....8874
241.....8874
242.....8874
244.....8874
247.....6600
250.....8874
251.....8874
255.....8874
300.....6601
511.....8034
570.....8034
571.....8034
575.....8034
590.....8034
812.....6600
850.....8034
880.....6600
881.....6600
882.....6600, 7734, 8034
883.....6600
884.....6600
885.....8874
886.....6600
888.....8888
904.....6600
905.....6600, 8034
912.....6600
941.....8034
960.....6600
968.....8034
970.....8034
990.....8034
3280.....6600

25 CFR

176.....6145

26 CFR

1.....6602, 6603, 6614, 6670, 6800, 7504, 8302, 8747, 9726
5h.....6146
26.....8441
26a.....8441
41.....6625
48.....6518, 8302
51.....6626
55.....6146
602.....6146, 6518, 6603, 6614, 6770, 6800, 7504, 8441

Proposed Rules:

1.....6670, 6681, 8773
26.....8469
26a.....8469
48.....6524
602.....8469

27 CFR

25.....8626

28 CFR

0.....9435
9.....9614
16.....7734
32.....8451
50.....8452

66 ... 8034
701 ... 8895
Proposed Rules:
16 ... 9452

29 CFR

97 ... 8034
452 ... 8750
1470 ... 8034
1910 ... 6628, 8322
2619 ... 8454, 9024
2676 ... 8455

30 CFR

57 ... 9615
202 ... 8181
203 ... 8181
206 ... 8181
207 ... 8181
210 ... 8181
241 ... 8181
914 ... 9316
917 ... 7735
935 ... 7737
946 ... 7180
Proposed Rules:
75 ... 6162, 6512
785 ... 9453
823 ... 9453
906 ... 7211
914 ... 8469
916 ... 9669
917 ... 7212
918 ... 8222
934 ... 8933

31 CFR

25 ... 9728
316 ... 9615
342 ... 9615
351 ... 9615
500 ... 7354
535 ... 7355
540 ... 7355
545 ... 7355
550 ... 7355
Proposed Rules:
103 ... 7948

32 CFR

40a ... 9317
278 ... 8034
291 ... 9435
295 ... 7358, 8629
518 ... 8901
Proposed Rules:
838 ... 9455

33 CFR

117 ... 6984, 8751, 8848, 9627
161 ... 7738
334 ... 6942
Proposed Rules:
110 ... 7949, 8773, 8774
117 ... 8850, 9670
165 ... 7949
334 ... 9671

34 CFR

74 ... 8034
80 ... 8034
304 ... 6944
333 ... 6952
Proposed Rules:
300 ... 8390
330 ... 8608
331 ... 8608
350 ... 6958
357 ... 6958
612 ... 7312
653 ... 8397
696 ... 7953
700 ... 9088
706 ... 9408
707 ... 9408
708 ... 9408
779 ... 9246

35 CFR

60 ... 7894

36 CFR

1207 ... 8034
1256 ... 6821
Proposed Rules:
7 ... 7466

37 CFR

203 ... 8456
Proposed Rules:
201 ... 7073

38 CFR

1 ... 9442
2 ... 7183
3 ... 7902
17 ... 7185, 9627
21 ... 7183
43 ... 8034
Proposed Rules:
1 ... 8934
2 ... 8471
3 ... 8471
14 ... 8471
21 ... 9125

39 CFR

111 ... 6985
946 ... 6986
Proposed Rules:
111 ... 6837, 9334

40 CFR

30 ... 8034
31 ... 8034
33 ... 8034, 9443
35 ... 9736
60 ... 7514, 8182
61 ... 8182
81 ... 8182, 9112
180 ... 7739, 8845, 9024, 9443
228 ... 6987, 8183, 9444
261 ... 6822, 7903
264 ... 7740
265 ... 7740
266 ... 7516
270 ... 7740
425 ... 9176
Proposed Rules:
Ch. I ... 9753
52 ... 6842, 6845, 9334–9336
81 ... 6845, 7113
86 ... 7676
116 ... 6762
117 ... 6762
122 ... 7642
123 ... 7642
124 ... 7642
180 ... 6671, 7539–7543
300 ... 8223
302 ... 6762, 7073
501 ... 7642
763 ... 8636
795 ... 8638
799 ... 8638

41 CFR

50–201 ... 7741
Proposed Rules:
51–7 ... 8225

42 CFR

57 ... 9114
405 ... 6525, 6629
406 ... 6629
409 ... 6629
410 ... 6629
413 ... 6525, 6629, 9172
416 ... 6629
421 ... 6629
424 ... 6629
441 ... 6525
482 ... 6525
485 ... 6525, 9172
489 ... 6629
498 ... 6525, 6629
Proposed Rules:
405 ... 8654, 9337
412 ... 9337
413 ... 6672, 9337
431 ... 8654
433 ... 8654
434 ... 8654
456 ... 8654
462 ... 8654
466 ... 8654
473 ... 8654
476 ... 8654
489 ... 8654, 9337
1003 ... 9260

43 CFR

4 ... 8752
12 ... 8034
20 ... 8186
Public Land Orders:
6664 ... 7186
6665 ... 7187
6666 ... 7520
6667 ... 9628
6668 ... 9628
6669 ... 9628
Proposed Rules:
3000 ... 9214
3100 ... 9214
3110 ... 9214
3120 ... 9214
3130 ... 9214
3160 ... 9214
3180 ... 9214
3200 ... 9214
3280 ... 9214

44 CFR

13 ... 8034, 9317
64 ... 6148, 6150, 8457
67 ... 7915
Proposed Rules:
67 ... 6676

45 CFR

12 ... 7744
16 ... 7832
74 ... 8034
92 ... 8034
96 ... 6824
402 ... 7832
602 ... 8034
1157 ... 8034
1174 ... 8034
1183 ... 8034
1234 ... 8034
1602 ... 6151, 9726
2015 ... 8034
Proposed Rules:
60 ... 9264

46 CFR

2 ... 7745
31 ... 7745
34 ... 7745
58 ... 7745
71 ... 7745
76 ... 7745
91 ... 7745
95 ... 7745
107 ... 7745
108 ... 7745
109 ... 7745
146 ... 7745
147 ... 7745
167 ... 7745
176 ... 7745
181 ... 7745
189 ... 7745
193 ... 7745
308 ... 8186
550 ... 9629
572 ... 7520
580 ... 9629
586 ... 7361
Proposed Rules:
581 ... 8775
588 ... 7379

47 CFR

0 ... 6916
2 ... 8459
22 ... 8459
25 ... 8459
64 ... 7753, 8629, 8630
73 ... 6828, 7754, 8189, 8190, 8902–8904
80 ... 8904
87 ... 8904
90 ... 9447
Proposed Rules:
2 ... 8225, 8667
22 ... 8472
69 ... 7214, 9459
73 ... 6163–6165, 6677, 7216–7218, 8225–8228, 8472, 8473, 8667, 8935–8937, 9459
74 ... 6677, 8667
78 ... 8667

48 CFR

26 ... 6219
52 ... 6219
215 ... 8906
222 ... 6155
225 ... 9118
242 ... 8906
252 ... 8906, 9118
501 ... 7365
525 ... 9629
532 ... 7365
552 ... 7365, 9629
701 ... 6828

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 17, 1988